UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re: | : | |
| | : | Chapter 11 |
| SABINE OIL & GAS CORPORATION | : | Case No. 15-11835 |
| Debtors. | : | |
| _____ | : | |
| | : | |
| SABINE OIL & GAS CORPORATION, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Adv. Proc. No. |
| | : | 15-01126-scc |
| WILMINGTON TRUST, N.A. | : | |
| Defendants. | : | |
| _____ | : | |

United States Bankruptcy Court
One Bowling Green
New York, New York 10004
October 15, 2015
10:01 AM - 2:56 PM

B E F O R E :
HON SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

ECRO OPERATOR: KAREN

HEARING re Doc #216 Application to Employ Blackstone Advisory Partners L.P. as Investment Banker

HEARING re Doc #369 Debtors' Supplemental Motion for Entry of an Amended Final Order Authorizing Payment of (I) Operating Expenses, (II) Joint Interest Billings, (III) Shipper and Warehousemen Claims, and (IV) Section 503(b)(9) Claims

HEARING re Doc #341 Application to Employ Deloitte & Touche LLP as Independent Auditor and Accounting Services Provider

HEARING re Doc #370 Application to Employ BB Genesis Land & Mineral Resources, L.P., D/B/A Genesis Land & Mineral Resources as Land Due Diligence Contractor

HEARING re Adversary proceeding: 15-01126-scc Sabine Oil & Gas Corporation v. Wilmington Trust, N.A.
Motion to Dismiss

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: How is everyone? Smile, Mr. Marcus. It's not that bad.

Okay, I have your revised agenda and I understand that a number of matters have been adjourned or settled, so I'm ready when you are.

MR. MARCUS: Your Honor, for the record, Christopher Marcus from Kirkland for the Debtors. I believe the first item on the agenda is the --

THE COURT: Okay, I guess my question is, did you want to go through the rest of the agenda and then we'll have the arguments on the Motion to Dismiss?

MR. MARCUS: I leave it to Your Honor. We were prepared to go in the order of the agenda but if you'd like to hear the uncontested --

THE COURT: I think I'd like to hear the uncontested matters first. Let's get those out of the way and then we can get rolling on the Motions to Dismiss.

MR. MARCUS: Very good, Your Honor. Ms. Pirro is going to handle the uncontested matters for us.

THE COURT: Very good.

MS. PIRRO: Good morning, Your Honor.

THE COURT: Good morning.

MS. PIRRO: For the record, Cristine Pirro of Kirkland & Ellis on behalf of the Debtors.

The first uncontested matter that the Debtors have on the agenda is the supplemental lienholders motion. So, in part because of the inherent delay associated with the joint-interest billing process, the Debtor has received several invoices after entry of the final order that they didn't anticipate.

Accordingly, we've exhausted our DIP cap and are seeking approval of an increase in the cap of $3.2 million to allow payment of undisputed, pre-petition amounts.

However, we're also seeking to lower the operating expense cap to entirely offset that. We received no objections and there are no changes to our proposed order.

THE COURT: Okay. Does anyone else wish to be heard with respect to the supplemental lienholders motion and the relief requested?

All right, very well, that'll be granted.

MS. PIRRO: Thank you, Your Honor. Next up on the agenda is the Deloitte retention application. This is the application to authorize and approve the employment and retention of Deloitte as our independent auditor and accounting services and this is going to be nunc pro tunc to the petition date under 327, 330 and 331.

We received no objections and there have been no changes to the proposed order.

THE COURT: All right. Mr. Schwartzberg, I can

see you back there in your customary position.

MR. SCHWARTZBERG: I have no objection, Your Honor.

THE COURT: Very good. All right, the Deloitte retention application will be granted.

MS. PIRRO: Thank you, Your Honor. The only other motion that the Debtors had that was previously on the agenda is the contract rejection motion but as you know, we have adjourned that to the next hearing to try to (indiscernible).

THE COURT: Okay. So that's adjourned to, is it November 10th?

MS. PIRRO: November 10th, correct.

THE COURT: All right. I would ask that -- and you did file a reply yesterday. I would just ask, as you always do, that you keep us informed as to whether or not any or all of that settles.

MS. PIRRO: Will do.

THE COURT: All right, thank you.

MS. PIRRO: Thank you.

THE COURT: So we also have the two Committee retention applications, yes?

MR. DEVORE: Good morning, Your Honor.

THE COURT: Good morning.

MR. DEVORE: Andrew Devore from Ropes & Gray on

behalf of the Committee.

There's actually three retention applications up for hearing today. Blackstone, also known as -- better known as PJT --

THE COURT: Yes, right.

MR. DEVORE: -- and then the two that were never objected to, Porter Hedges LLP., and Genesis. If Your Honor would like, I can start off with Blackstone or we can go to the uncontested.

THE COURT: Sure. So I've received with respect to, and it's going to be a habit that dies hard to stop calling them Blackstone, but why don't we try? So PJT Partners.

MR. DEVORE: Correct.

THE COURT: PJT. All right. So my understanding is that, based on subsequent negotiations, there is now a revised engagement letter and a wholly consensual retention?

MR. DEVORE: Correct, Your Honor, and I can walk the Court through the changes --

THE COURT: Okay.

MR. DEVORE: -- from the version that was filed on Monday, if that would be helpful.

THE COURT: Sure.

MR. DEVORE: So, prior to Monday's response, PJT had agreed to certain concessions that resolved the second

lien agent's objection, and yesterday evening, PJT reached resolution with the first lien agent, and the concessions and changes from the version that was filed on Monday most notably include reducing the $1.25 million dollar discretionary fee to $650,000.

THE COURT: Right, but that's a -- it doesn't shift back into the overall fee. It was a reduction of the $600,000 in the overall fee.

MR. DEVORE: Correct. So there is a $3 million dollar restructuring fee that's been approved under 328, and then a discretionary fee of $650,000 that's also being grouped under 328, but it will only be awarded if, at the end of the case, based on the case outcome, the Committee determines to award that fee.

THE COURT: Okay, so previously though, there was a component of the discretionary fee that was subject to, also to review by the secured lenders and the U.S. Trustee. Is that now out?

MR. DEVORE: So, the $1.25 million dollar discretionary fee was to be subject to 330 review by the lenders. In exchange for the reduction down to $650,000, there was no longer a 330 review and that is 328 reviewed.

THE COURT: And so there's no longer a 330 review including by me?

MR. DEVORE: There is -- U.S. -- as is customary,

the U.S. Trustee retains 330 review on (indiscernible).

THE COURT: Okay. And is there any -- and the standard, because this has arisen before, the standard as I'm looking at it now is the Committee's sole discretion.

MR. DEVORE: Correct.

THE COURT: Okay. All right, so there was that change and then I think there was also a change with respect to the crediting against -- of the monthlies.

MR. DEVORE: Right, instead of -- so the $150,000 monthly fee was to be credited at 50 percent after six months and now it's to be credited after four months.

THE COURT: After four months, okay. All right.

MR. DEVORE: So with those changes, unless Your Honor has any questions, we have asked that the application be approved.

THE COURT: All right. The only thing -- I'll grant the application. The only thing that I will say though is that I do expect that the advisors will keep an eye on what each other is doing and that there not be duplication about this.

MR. DEVORE: We most certainly agree.

THE COURT: Because I will, at the end of the day, be looking at that, and that's going to particularly come into play when there's a plan and when there's plan negotiations, and I think it's going to be a challenge to

not duplicate efforts, to a certain extent, but I'm going to expect that that be done.

MR. DEVORE: Yeah, no, the Committee is committed to ensuring that there's no duplication and the professionals are as well.

THE COURT: Okay. All right. Does anyone else wish to be heard with respect to the approval of the retention by the Committee of PJT Partners? All right, so we'll enter that as well.

With respect to the other two retentions, the Porter Hedges and the BD Genesis, again, as a general matter, I have no concerns but I am concerned, not in the sense of worry, but I'm concerned with the number of professionals that are now going to have input.

It's understandable because it's complicated. But I do expect that everybody will be appropriately careful in their tasks, keeping their time, not duplicating efforts. I think everybody knows.

MR. DEVORE: Yeah, no, the Committee and its professionals are certainly aware of this and part of the reason for retaining Genesis in addition to Porter & Hedges is to promote the efficiency and reduction of cost.

Genesis is much cheaper than sending a law firm out to the recording offices, so that is why there is an additional professional.

THE COURT: Excellent. All right, and that's -- you know, that's actually something that was, in a sense, contemplated by the AVI at reform commission, so to the extent that that is a money-saving measure, that's a good thing.

Mr. Schwartzberg, anything from you on these two applications?

MR. SCHWARTZBERG: I have nothing, Your Honor.

THE COURT: All right, so those will be approved as well. Very good. Okay.

MR. DEVORE: Thank you, Your Honor.

THE COURT: Thank you. All right, so except for the Motion to Dismiss, everything else has been taken care of, and we can talk about all the discovery matters toward the end of the hearing, all right? So we can get started on the Motion to Dismiss.

MOSES SILVERMAN: Your Honor, may I set up --

THE COURT: Yes, go ahead. I should have noted at the outset that there are a couple of thousand parties on the phone. I'm not going to take the time to identify them. It appears that everybody is in listen-only mode, so.

It does appear that someone is on a live line. If everyone could put their phones on mute, I would appreciate it.

Okay, so before we get started, there's probably a

little bit of concern or discomfort about exactly what it is that I'm doing today, since there were various requests in various directions about what to do today.

They included doing nothing, they included hearing it and in the event that there was a ruling that it be without prejudice, et cetera. And my thinking is that I just -- I'd like to a) move the case along, b) not prejudice any of the ongoing investigations, c) ultimately be efficient and d) become smarter on what the issues are and how the parties see the issues.

The papers were very clear and very well done, but for me, the issues often come alive when I hear counsel argue and talk about the transactions. I have these nice, multicolored diagrams from, I think, the first day that have been helpful to me.

So if -- I appreciate your indulging me and I just would ask that nobody read too much into anything that I might have to say, and as always, I'm going to try to say not too much but I usually fail, so.

MOSES SILVERMAN: Your Honor, I'm Moses Silverman, Paul, Weis, Rifkind, Wharton & Garrison.

THE COURT: How are you?

MOSES SILVERMAN: Well, Your Honor. I appreciate appearing before you for the first time, and we appreciate your hearing this motion promptly, and I guess I don't need

to say don't be shy. We welcome your questions.

THE COURT: I'm not shy.

MOSES SILVERMAN: So, please, interrupt and I have my bankruptcy colleagues here who undoubtedly will need to assist me with some real tough ones, but Your Honor, we represent Wilmington Trust, a successor, administrative agent of the second lien Creditor agreement and we are moving to dismiss the adversary proceeding, which was brought to set aside as a constructed (indiscernible) liens that were granted in January 2015 to secure $700 billion dollars in previous issued debt. Yes?

THE COURT: I'm going to ask one final time. Whoever is on the phone on a live line, put your phone on mute or I'm going to ask the operator to disconnect you. Thank you.

I'm sorry, go ahead, Mr. Silverman.

MOSES SILVERMAN: Yes, Your Honor. There is no challenge to the claim itself. There is no question that $700 million dollars in value cash money was given to the Debtor and its predecessors. As Your Honor can see in our papers, we have two main grounds for a motion. We'll just mention them and then I think it might be helpful to discuss the facts and try to untangle some of the names.

THE COURT: Sure.

MOSES SILVERMAN: As Your Honor knows, our first

argument is that the liens were given for antecedent debt and that is under the definition of value, sufficient, and there is a long line of cases that -- in this district, that have adopted a per se rule that a lien given for antecedent debt is not fraudulent conveyance.

THE COURT: And it doesn't matter that there is not a strict identity between, I'll call it the pre-combination borrower and the post-combination borrower?

MOSES SILVERMAN: There is a strict identity, Your Honor, because as we will discuss, the Debtor is the post-combination combined company, and they were the ones that gave the liens that are being challenged, and I will try to make that clear as we go through the facts.

THE COURT: Right, but you have to track the debt from its birth, so to speak, right?

MOSES SILVERMAN: Exactly, and that's important because that is -- those dates of the debt are what in part makes it an antecedent debt.

THE COURT: Okay.

MOSES SILVERMAN: And our second point, which will get into as I say, part of a provision because the liens were given in connection with securities benefits, and I will address that secondly. But I thought it would be helpful to go through the facts that are in the complaint, that are in the Debtor's brief, and that are in the

documents relied on, which are part of our -- we put into the record with our declaration. And I hope to clarify some of the confusion that's caused by the fact that some of the same names are used for different companies --

THE COURT: Sure.

MOSES SILVERMAN: -- and so, companies have different names --

THE COURT: Right.

MOSES SILVERMAN: -- so I know Your Honor has the chart, but the facts really, once you sort out the names, aren't that complicated.

THE COURT: Right.

MOSES SILVERMAN: And --

THE COURT: You just have to keep straight Forest, old Sabine and new Sabine, more or less.

MOSES SILVERMAN: That's more or less it. So I think that when the facts are clear, our arguments become very clear. So I would like to review five documents, the second lien credit agreement, the merger agreement as rendered, the assumption agreement, the second amendment to the credit agreement and the deeds of trust.

So let me start with the second lien credit agreement which, as Your Honor pointed out, goes back to December of 2012, and is with Sabine Oil & Gas, LLC., which as Your Honor said is called Legacy Sabine in our papers.

The original loan in December is for $500,000 million dollars, that's Exhibit D to our declaration, and in January 2013, it was amended to -- increased to $650,000 million dollars. That's Exhibit E, and the complaint acknowledges that that $650,000 million dollars was received, and that's in Paragraph 111 of the complaint, and it was received by Legacy Sabine, which, my friends in their papers called Sabine O&G. We chose not to use that because the current company is also Sabine O&G so we've been calling it Legacy Sabine.

THE COURT: Legacy Sabine, okay.

MOSES SILVERMAN: There are a couple of provisions of the loan documents that I would just like to call to the Court's attention. First is the security provisions, and that's in Section 8.11 of Exhibit D, and that provides that, as a second priority lien, on 90 percent of the oil and gas properties. And there is a provision called the Additional Collateral Provision, which provides as follows:

If a reserve report shows that less than 90 percent of the assets are under lien, then the company has the obligation to put more on the lien to reach the 90 percent. That 90 percent subsequently is reduced to 80 percent.

THE COURT: Right.

MOSES SILVERMAN: But this is a concept that I

understand is common in oil and gas industries, I'm not sure what other industries have it, where it's not -- the loan agreement isn't on one particular asset because assets come in and go out, so it's on 90 percent or then 80 percent and it's an obligation of the agreement.

I'd also like to point out the negative covenance, in Sections 9.14 and 9.15 of Exhibit D. I think these are reasonably typical but they're important here. They provide that the borrower, Legacy Sabine, cannot merge unless the surviving company assumes all the obligations of the borrower, and is substituted as the borrower under the credit agreement.

This is obviously important, certainly the way things worked out, because you have to have a borrower who's obligated to repay the loan. And if, in the event of a merger, as happened here, if the original borrower no longer exists, the lender has to know that someone else is in its place and is obligated on the loan.

THE COURT: So, pause there for a second because --

MOSES SILVERMAN: Yes.

THE COURT: -- isn't it the case that plaintiffs are going to say, "Exactly right,"

MOSES SILVERMAN: Yes.

THE COURT: -- they're going to say, "That's

exactly right, and that demonstrates why you have to collapse all these transactions because they indeed had to, they knew about that covenant, they had to comply with that covenant, so therefore, the merger and the subsequent granting of the liens on the collateral that comes over with the merger is all part of one transaction, and the mere fact that they complied with the covenant doesn't mean that the transaction is okay from a fraudulent transfer standpoint." So my fundamental point is --

MOSES SILVERMAN: Sure.

THE COURT: -- can you flip -- won't they flip that fact against you?

MOSES SILVERMAN: I don't believe so. First of all, let me flip that fact against them because keep that in mind when we talk about safe harbor and they'll try to say that these are --

THE COURT: Yes, I will rem --

MOSES SILVERMAN: These are inter-related, but not linked. So let's just -- we'll get to that.

THE COURT: Okay.

MOSES SILVERMAN: But here, Your Honor, frankly, it doesn't matter because, as Your Honor pointed out, this debt is from 2012 and 2013. When a company merges, under New York law, it assumes all of the obligations. And under the Allegheny case, it tells us that it assumes them as of

the date of the original obligations. Now, if you collapse the transaction or not -- I planned to get to this later, but let me say it now, if you collapse the transaction, it's still antecedent debt from December of 2012 and January of 2013. Or at most, or least, or whichever, it's present debt. So it is given a lien for either antecedent or present debt.

In fact, as we'll get to when we discuss the Deeds of Trust, the liens were given two months later, and that's clearly for antecedent debt and they were given by the combined company.

So, whether you collapse it or not, you are still given liens for present and antecedent debt, and it's a very important point, that when you have a merger, the new company has to assume the obligations of the companies merged into it, otherwise this would be the greatest device in the world to end all liabilities if you could merge and say, "Well," you know.

THE COURT: Sure would.

MOSES SILVERMAN: Yeah. But --

THE COURT: It'd be a magic wand.

MOSES SILVERMAN: Well, it might, but they'd accuse us of cleansing them. That would be Mr. Clean. But -- so, whether you collapse it or not, and I'd like to cover that in a little detail, but let me just walk us through

these (indiscernible) --

THE COURT: Sure, and you're going to track what happens to the Forest debt?

MOSES SILVERMAN: Absolutely, the Forest debt, okay.

THE COURT: Right? I mean, pre-merger, there's the old Forest credit facility.

MOSES SILVERMAN: Let me get to (indiscernible)

THE COURT: I'll let you get to it when you want.

MOSES SILVERMAN: Right, no, no, no, absolutely, but just to finish on the merger agreement --

THE COURT: Okay.

MOSES SILVERMAN: -- I'm sorry, on the credit agreement --

THE COURT: Right.

MOSES SILVERMAN: -- the last provisions to flag for the Court are also standard. The default provisions in 10.01(d) and 10.02(a) that provide that, if the borrower, which became the combined company, does not comply with the additional collateral provisions, it's an event of default and the lenders can accelerate.

So, let me turn to the merger agreement and the merger itself, and first, Your Honor, I don't have that chart with you. We thought of making a chart but it was so simple that, for what we need, that we don't need all of the

elaborate things.

THE COURT: Okay.

MOSES SILVERMAN: So let me just talk about the structure of the Sabine entities at the time -- just before the merger.

THE COURT: Pre-combination.

MOSES SILVERMAN: Just before the merger.

THE COURT: Okay.

MOSES SILVERMAN: The ultimate parent is Sabine Investor Holding, LLC.

THE COURT: Right.

MOSES SILVERMAN: It owns an intermediate holding company called Sabine Oil & Gas Holdings, LLC. And that intermediate holding company owns Sabine Oil & Gas, LLC., which is what we've been calling New Sabine, which is the operating company they call Sabine O&G and it's the original borrower under the credit agreement. So, just to be clear, Legacy Sabine, Sabine O&G, Plaintiff, Debtor, all the same company. Okay.

The merger agreement, as amended, are exhibits F and G to our moving declaration, and what happens in the merger is that, Investor holding, the ultimate parent, transfers its equity in the intermediate holding company to Forest Oil, in exchange for securities of Forest Oil.

So now, Forest Oil owns the intermediate holding

company, which means it owns Legacy Sabine. That's step one, and that's described in complaint Paragraph 98 and 99 and in Sections 1.1(a)1 of Exhibit F and 2.1 in Exhibit G. First, simple step.

Second, Sabine Oil & Gas Holdings and its subsidiary, Legacy Sabine, is merged into Forest Oil, and that's complaint Paragraph 101 and 102 and Section 1.1(c) of the merger agreement.

Then, the Forest Oil and Sabine entities merge into a single entity, and they file a Certificate of Merger with New York State. That's Exhibit H in our moving papers. And at that time, Legacy Sabine no longer exists as a separate entity. It is now part of Forest Oil.

And just to confuse names a little bit, three days later, Forest Oil changes its name to Sabine Oil & Gas Corporation, as opposed to LLC, and that's what we've been calling New Sabine. They call it the combined company, good term, but those are the same thing. That is the merged entity.

At the time of the merger, December 2014, there's also an Assumption Agreement, which is Exhibit C to our papers, and the recitals A and B1 say specifically that Forest Oil, and this gets a little confusing with the names because it's still Forest Oil at the time but it becomes New Sabine three days later, or combined company three days

later, but Forest Oil specifically says that it is the successor to Legacy Sabine under the credit agreement, and it unconditionally assumes all obligations and to be bound by the loan documents.

So, in December of 2014, Forest Oil, which then -- which is the company that is New Sabine, the merged company, assumes all those obligations.

To go briefly to the second amendment to the second lien credit agreement, which is also done in December at the same time, it amends the loan agreement to add another $50 million dollars in debt.

THE COURT: Right.

MOSES SILVERMAN: That is not challenged in this proceeding. The Debtor says that in Page 14 of its opposition and acknowledges that Paragraph 132 of the complaint that it received that money. So there's now $700 million dollars that has been lent, pursuant to the second amendment.

THE COURT: Okay. Now, you're also going to talk about what happens to what I call the old Forest credit agreement, which pre-merger, there was $105- out and then, pre-merger, the old Sabine credit facility, there was $619- out and stuff happened, right?

MOSES SILVERMAN: Stuff happens. (Indiscernible). I think Bush got in trouble for that.

THE COURT: He did, and this is a much more benign context to use that phrase.

MOSES SILVERMAN: But yes, and what happened is that all of the debt -- I've been focusing on the debt at issue in this case --

THE COURT: Right.

MOSES SILVERMAN: -- but all of the debt of the companies that are merged together --

THE COURT: Right.

MOSES SILVERMAN: -- are now the debt of the merged company.

THE COURT: Right, but the old Forest credit facility goes away. It gets -- essentially gets paid down and the amount outstanding, it them morphs, if you will, into what's now called the RBL credit facility, right?

MOSES SILVERMAN: Well, there is that, Your Honor. I think there were multiple levels of debt at the Forest Oil level, but there was a lien --

THE COURT: Well, not the bonds. We'll talk about the bonds later.

MOSES SILVERMAN: Right, but there was a -- and I don't have the details here myself but there was a renegotiation of the RBLs. They have the first lien, we're behind them, that's what we want. But that's not an issue that we're fighting with this -- in this proceeding. We're

fighting the validity of our liens. If there isn't enough money to pay the RBLs, we're out of luck.

THE COURT: Right.

MOSES SILVERMAN: We get that, but there --

THE COURT: I guess the focus of my question, and I'm not trying to be obtuse or tricky in any way, the focus of my question is the whole concept at the heart of this action that the unsecured Creditors of Forest, putting to one side whether you believe that's an appropriate perspective or characterization, whether they're worse off as a result --

MOSES SILVERMAN: They may be.

THE COURT: -- of the combination.

MOSES SILVERMAN: They may be.

THE COURT: Because before the combination, they were -- there were these un-liened assets at Forest, right?

MOSES SILVERMAN: Yeah.

THE COURT: And there was a credit facility --

MOSES SILVERMAN: Right.

THE COURT: -- secured credit facility, right?

MOSES SILVERMAN: Above them.

THE COURT: Above them?

MOSES SILVERMAN: Yeah.

THE COURT: Right, with $105 million dollars.

MOSES SILVERMAN: We're talking about the

unsecured Creditors, of course.

THE COURT: That's right.

MOSES SILVERMAN: Right.

THE COURT: Right.

MOSES SILVERMAN: There is no question that if the facts pleaded are true, the unsecured Creditors of Forest Oil may not like this transaction. The merger may not have been in their best interest. I don't know what the true facts are but accepting the facts pleaded, yeah, I could see why they're not happy with it.

But the fact that one Creditor is preferred over another Creditor is not a fraudulent transfer. The Appellate Division said that in Ultramar, and it's -- it's on Page 11 of our reply brief that it's quoted by the Second Circuit, I think, in the Sharp case that says just that.

So the fact that the Forest Oil unsecured Creditors are hurt by this merger, assuming the truth of the facts, doesn't mean there was a fraudulent transfer, and -- but let me just finish going through the facts, Your Honor -

-

THE COURT: Sure, go ahead, go ahead, yes.

MOSES SILVERMAN: -- and I've -- but I do appreciate these questions. The last document I just wanted to go over is the Deeds of Trust, which are Exhibits L through Q of our moving papers.

Two months after the closing, these liens were signed by New Sabine and filed in the relevant Texas counties. There are the liens, the only liens, that are at issue in this action. The liens that were signed and filed two months after the closing by New Sabine. These were given by New Sabine to pledge New Sabine's assets, to secure New Sabine's obligation, as the obligor and borrower under the credit agreement.

So, let me turn to our (indiscernible)

THE COURT: And somewhere in there it went from 90 percent to 80 percent, right?

MOSES SILVERMAN: Yeah, I think what happened -- my friends will throw pencils at me if I get it wrong, but I think what happened is the RBL agreement, the new RBL agreement became 80 percent and that triggered 80 percent in the (indiscernible).

THE COURT: Yes, they're nodding their heads, you got that right.

MOSES SILVERMAN: Okay, so let me turn to the first argument, that the liens were given for antecedent debt. The first key fact, which is undisputed, is that the combined company assumed the obligations. That's not in dispute. They said that in their opposition on Page 4, they said that in their complaint at Paragraph 114, and indeed they have to say that for two reasons. One, the assumption

agreement says that, two, the BCL, New York Business Corporation Law, Section 906(b)3 says: "the surviving corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent entities," and that's critical, because otherwise, what happens to the workers? What happens to the contracting parties? These obligations don't go away in a merger. They, as a matter of law and belt and suspenders, the assumption agreement, made them the obligations of New Sabine.

So they concede that. They concede the $700 million dollars in value was paid and they don't challenge the claim and indeed they can't, and they do not contest the fact that two months later, New Sabine issued -- granted liens on its assets to support its debt. Now, they say it should be collapsed and let me come to that in a minute, but just to get the basic principles out, to have a fraudulent transfer under 548(a)1(b), you need two things.

You need the Debtor receiving less than equivalent value and you need insolvency or variants on insolvency.

Let me just put insolvency to the side because they pleaded insolvency. This is a Motion to Dismiss, we'd have to accept that as true. I should say parenthetically that if we ever get to litigate this, and I don't think we should have to, but Your Honor will decide that, that will

be hotly contested because they gave us solvency certificates -- or not us, I mean, they provided solvency certificates in connection with the merger, both Legacy Forest and Legacy Sabine, but in their complaint they say that's not true, they were insolvent. We have to accept that for the purposes of this motion, so we turn to the question of reasonably equivalent value.

And here, we're also helped by the language of the code because value is defined in 548(d)2(a) as: "Securing of a present or antecedent debt of the Debtor." A present or antecedent debt of the Debtor. And no matter how you look at it, collapsed or sequential, these liens were given to secure an antecedent debt of the combined company. And they acknowledge that.

There is also a long list of cases, which we cite at Page 15 and 16 of our moving brief, for the proposition that there is a per se rule that liens given to secure present or antecedent debt are reasonable equivalent value in a -- and preclude a constructive fraudulent conveyance claim. The cases include AppliedTheory by Judge Gerber, Kaplan Breslaw Ash by Judge Gerber, M. Silverman Laces, Judge Chin in the District Court, Market XT Holdings, Judge Gropper, Sharp in the Second Circuit, and if I make this quote one, Judge Buchwald, and affirming Judge Gerber in AppliedTheory, said 330 B.R. 363, she called it the "per se

rule consistently applied in this District," and she described it this way: "provides that a Debtor's grant of security interest in its assets to a lender who has previously given the Debtor a cash loan may not be considered a fraudulent conveyance." That's exactly what we have here, okay?

So, what does the Debtor say in response? First, the Debtor very helpfully, to us, we think, admits the key elements of our claim. It admits that it unconditionally assumed this obligation, so this is now an obligation of New Sabine. It doesn't dispute that it had the obligation under the agreement to grant additional collateral up to 80 percent. It doesn't dispute that the challenged liens were given to secure the debt that it agrees it assumed. And it simply ignores the line of cases that I've just cited, that say there is a per se rule that liens given for antecedent debt aren't constructive, fraudulent transfers. In sum, it doesn't dispute any of the points we make, fact and law in our view, and on this ground, the most (indiscernible).

THE COURT: But it says -- but they say that the difference here is that there was a merger.

MOSES SILVERMAN: Mm hmm.

THE COURT: And that what you're suggesting is what we talked about, about fifteen minutes ago, is that in effect, a merger is the ultimate -- your theory is correct,

you apply the per se rule, sure, but in a merger context, it's a different entity, so therefore, they -- what you're suggesting is that, in any merger where there's this kind of a structure, you can have a fraudulent conveyance but --

MOSES SILVERMAN: But it's not a fraudulent conveyance, Your Honor. It may have been a bad merger. The merger may have hurt the Creditors of Forest Oil. I don't know. You know, they cite the Allegheny case. What we -- what happened in the Allegheny case is they sued the company that sold the disputed merged entity. That was the fraudulent conveyance.

In fact, some of the language, for example, on page -- oh, I forget the page of their brief, but they talk about how they didn't get a good deal in the merger. Well, maybe they didn't get a good deal in the merger. Maybe they have a fiduciary duty claim against the people who were responsible for doing this. I don't wish it on them.

Maybe they have a claim against the officers and directors who took -- or people who took money out of this system. We had a discussion among ourselves as to whether or not they have a claim against the Sabine parent. It's kind of an interesting question. Mr. Herman tells me he doesn't think they do, and he knows more than I do, because the transfer was of stock in an allegedly insolvent company, so they gave nothing and got nothing. But theoretically, if

there is -- you know, if as in the Allegheny suit, if Forest had paid good cash for Sabine, and gotten an entity that was insolvent, it would have a fraudulent transfer claim, but it would be against the seller. It wouldn't be against the Creditors who were given liens after, or at worst, simultaneously with the transaction, as was required by law, (indiscernible) and the contract.

So the fact that the legacy Forest Oil people may not be happy with this deal does not mean that giving us the liens is a fraudulent transfer, particularly when the law is absolutely clear on these facts, which are uncontested, which is that when you give a lien to support an antecedent debt, that is not a fraudulent transfer.

Now, they say we look at it through the wrong lens and I guess that's what we're just talking about.

THE COURT: Right.

MOSES SILVERMAN: You know, I'm an empathetic guy, I can look at it through the Forest Oil people's lens, I can see why they might not be happy. But that doesn't change the fact that it was the new company, the combined company, that assumed the obligation as it had to as a matter of law, and gave liens of its assets. You know, I think I'll give my colleagues credit for talking about legacy Forest Oil as a nostalgic concept. At the time this happened, it's a nostalgic concept, because it is the new company, not legacy

Forest Oil that gave the liens.

Now look, if legacy Forest Oil had entered into a transaction pre-merger that was a fraudulent transfer, the merger wouldn't wipe that out. That would be a good claim. So their whole concept that we somehow cleansed old fraudulent transfers doesn't make sense to me. The question is why is something that the Courts have clearly said is not a fraudulent transfer, why does it become a fraudulent transfer simply because one group of Creditors are unhappy about the consequence of a merger? The merger is a fact. That the company is combined is a fact. It has to be, because otherwise, we have no Debtor if somehow Sabine doesn't exist anymore.

So I think you know, we talked about the transactions being collapsed. They spend a lot of time on that. We really don't see the point because it's still giving liens on account of antecedent (indiscernible) debt whether the transaction is there or not. They say ha, you know, the Debtors overlook the fact that there can be fraudulent conveyance claims after a merger. Yeah, I mean, they cite the Allegheny case and the Heckinger case and they were. They have nothing to do with the kind of fraudulent conveyance claim that's being asserted here. Allegheny is, as we've just described, is a case against the parent of the transferred entity, or the seller, in effect. Heckinger is

against the directors, private equity sponsors and the acquisition lender for money taken out of the transaction. We're not saying they can't be a fraudulent conveyance claim when there's a merger. There certainly can and those are good examples. They say we have no case that supports the proposition that antecedent debt principles are constructive fraud claims in a merger.

Well first, let me turn that around and say they haven't come up with any case that supports their position. But actually, and we didn't address this in our brief and we should have, the Allegheny case is such a case dealing not with antecedent debt but with satisfaction. I will spend a minute or two on that because we did not get into this in our reply papers. But it stands for the proposition that satisfaction of an antecedent debt owed by the non-surviving company, assumed in a merger, constitutes value. This is how it happened.

As you know, satisfaction and giving liens are part of the same definition of value. As I understand Allegheny, and I've read it a lot of times - it's not an easy case to get through. But what happened is that PHCT, the parent, like --

THE COURT: I had the same reaction when I was reading it again yesterday.

MOSES SILVERMAN: Okay, well, I confess to have

really struggled with it. But I want to direct you to Section 2(e) of the opinion at Page 171 and 172. I don't know if you want to read it now, but let me tell you what that one section deals with --

THE COURT: Okay.

MOSES SILVERMAN: Because what happened in the case is PHCT has hospital subsidiaries, which it transferred to Centennial, in exchange for various considerations. The Centennial Trustee writes a fraudulent conveyance action --

THE COURT: Right.

MOSES SILVERMAN: -- and the Court, after first determining some interesting questions as to whether there was a Creditor of the Debtor and so forth --

THE COURT: Right.

MOSES SILVERMAN: -- goes on to analysis each element of consideration, and Section 2(e), which I believe starts at Page 171 --

THE COURT: Right.

MOSES SILVERMAN: -- it considers the effect of pre-petition, intercompany debts between PHCT and the hospital subsidiaries. And it says that the parent owed $52 million dollars to the subsidiaries, and that’s what the Trustee was focusing on, but the subsidiaries owed $3- or (indiscernible) million more, I think it was $55.4 million dollars, more to the parent. The Trustee wanted to ignore

that and said, “We have a fraudulent transfer action for the $52 million that the parent owed the subsidiary because we got nothing for it.” And you know, I’m not sure if I said this, but both of those debts were wiped out, eliminated, as part of the transaction.

The Court held that, as a matter of law, Centennial had received value for extinguishing the $52 million dollar debt owed to it. What was the value? It was the satisfaction of the obligation that the subsidiaries had to the parent, and since it was higher in value, that was reasonably equivalent value. Now, this is not a carbon copy of our case, it’s not the same case --

THE COURT: But what was -- I’m waiting for you to tie it in though. So what is that -- how does that tie to our facts?

MOSES SILVERMAN: It’s simply, and I didn’t want to overstate this, but it simply rebuts their assumption that there is no case that has applied antecedent debt principles to bar constructive fraud in a merger. I mean, it’s not exactly the same case and it deals with satisfaction of the debt rather than giving a lien, but it straddles the merger and applies the antecedent debt to its (indiscernible).

THE COURT: See, I thought you were going to -- I thought you were going to go to the fact that, pre-merger,

and this might be a frolic and a detour, but pre-merger, at Forest, there was a credit facility that was secured and it gets --

MOSES SILVERMAN: It was RBL.

THE COURT: No, well, you know we have a terminology problem. I don't think the terminology of the RBL comes into play until post-combination.

MOSES SILVERMAN: Okay.

THE COURT: Okay? But pre-merger, there was -- when it was Forest over here, old Forest --

MOSES SILVERMAN: Right.

THE COURT: -- there was a credit facility, secured, $105 million dollars. And the total outstanding debt at Forest was about $900 million dollars. Most if it were the 19 and the 20 notes. When the merger happens, that debt essentially gets retired with money that's now part of the amount outstanding at the RBL.

MOSES SILVERMAN: Right.

THE COURT: New Sabine. So where I thought you were going was, in fact, if you're looking at it from the perspective of the Forest, the nostalgic Forest unsecured Creditors, what happened was that this 100 million pound gorilla that they used to have in their capital structure, secured, went away, so it's all --

MOSES SILVERMAN: You're saying that's a benefit

to -- yeah, maybe but --

THE COURT: I mean, we're on a Motion to Dismiss, so we're not running numbers, but --

MOSES SILVERMAN: Yeah, maybe they did. You know, I'm accepting, as I must for purposes of a Motion to Dismiss --

THE COURT: Right.

MOSES SILVERMAN: -- their characterization of the facts. I am blessed by the fact that they agreed with all the facts that we think are dispositive of our motion. I'm not here to say that the legacy Forest Oil people, unsecured Creditors were improved or hurt by the merger. I'm willing to accept, for purposes of this, that they're not happy with the merger, and -- but that doesn't make this a fraudulent transfer. It makes people unhappy with the merger. The merger has certain consequences, there are all sorts of consequences. You know, you merger with another company, that other company turns out to be an asbestos nightmare. I mean, that really hurts you, but can you get rid of the asbestos liability? Of course not.

I mean, the problem, if they have one, and maybe they don't, but I'm willing to assume for this motion, and I have to assume for this motion that they do, is not with these liens, it's with the fact that there was a merger and that this debt and the obligations of the debt were assumed

by New Sabine. Basically, Your Honor, they admit the basic facts but - and I say this with all respect to my friends - they obscure it slightly with using names that are somewhat confusing as we pointed out in our brief, talking in the passive tense to sort of not acknowledge any more than they have to the basic simple facts that New Sabine became the obligor as a matter of law and contract, and issued liens in support of its antecedent debt.

(Indiscernible) the second related point that the Debtors do not respond to that I would like to make as well, which is related, because a second reason why reasonably equivalent value was given is because by giving the liens, they avoided a default. If they had not given the liens, they would have been in default under the conditional collateral provision of the loan. That would have caused an immediate acceleration, and it would have caused a cross-default on many other (indiscernible).

THE COURT: But the answer to that is you know, well that's a bootstrap argument. You engage in a merger --

MOSES SILVERMAN: Right.

THE COURT: -- that then, as you say, under the operative documents, and the BCL, requires you to assume the agreements, and then, lo and behold, you have to post this collateral.

MOSES SILVERMAN: Right.

THE COURT: Right? So it's a bootstrap. You've voluntarily gotten yourself into a situation, I'm making their argument --

MOSES SILVERMAN: Yeah.

THE COURT: -- you've gotten yourself into a situation where you have to pledge these assets, to the detriment of folks who previously enjoyed the benefit of their value. So good for you, but it's a bootstrap.

MOSES SILVERMAN: Well, no, Your Honor --

THE COURT: Do you under --

MOSES SILVERMAN: I think I unders -- we've been wrestling a lot trying to understand what their argument is, too. I don't think it's a bootstrap because again, it's saying that we're not happy with this merger. There are certain consequences of any merger. There are obligations you have to assume, and one of the obligations they have to assume, you know, they had to pay employees, they had to pay trade creditors, maybe they had some (indiscernible) asbestos, I don't -- you know, whatever. Whatever the liabilities were of the company they merged with, they had to assume. That may have been a terrible decision, but it was a decision that their Board and their management made, okay?

When you make that decision, you've got an obligation, and when they performed in accordance with that

obligation, they avoided a default and cross-defaults, and a series of cases in this District, which we cite, say that when the Debtor does something to avoid defaults, and gives itself breathing room, that is reasonably equivalent value. It's the M. Silverman -- that's not me, by the way, the M. Silverman. That's the laces case. These guys asked me. My family were woodworkers, we were not lace makers, but the M. Silverman laces case, the Pfeiffer case, the AppliedTheory case, and there is absolute silence in their brief on this point. They simply ignore it.

So, Your Honor, let me turn to the Safe Harbor, if I might?

THE COURT: Sure.

MOSES SILVERMAN: And it's helpful, or at least it's --

THE COURT: You don't really think Congress intended to Safe Harbor mergers, do you? This is this whole philosoph --

MOSES SILVERMAN: I don't think we're arguing --

THE COURT: -- this whole philosophical discussion we could have about --

MOSES SILVERMAN: Yeah, yeah.

THE COURT: -- what the Safe Harbors are intended to do.

MOSES SILVERMAN: Well, it wasn't to Safe Harbor

mergers, that's true. It was, though, to Safe Harbor transactions in connection with a securities contract, and the Second Circuit has told us in Mayo, it's kind of awful to say Mayo teachings or the Mayo holding but okay. The Second Circuit has taught us in Mayo and Quebecor and Enron that we have to look at what the statute says, and it has to be read broadly. You know, and in Enron --

THE COURT: Even applied to a fake securities contract.

MOSES SILVERMAN: Even applied to a Ponzi scheme. That's exactly what the Second Circuit did in Mayo. I mean, you know, the Trustee argued, "What securities contract? This was a fraud." And the Second Circuit said, "Well, there was something that was a securities contract, the original thing opening up the account, and this was related to that, and that's enough." Did Congress intend that? I don't know.

THE COURT: I hope not.

MOSES SILVERMAN: And I hate to sound like Justice Scalia, but look at what Congress said, and if what Congress said is clear, then you apply it. And that's exactly the position the Second Circuit has taken in the three cases that it has looked into it. So the task here is to look at what the statute says and see, are we in it, or are we not in it?

Now, I thought it helpful that if the (indiscernible).

THE COURT: So is there ever a time that -- so suppose there is a constructive fraudulent conveyance. Okay? Suppose there is.

MOSES SILVERMAN: Then I lose. (Indiscernible).

THE COURT: Well, no, but I mean for the purposes of this point --

MOSES SILVERMAN: Okay.

THE COURT: Right?

MOSES SILVERMAN: Yeah.

THE COURT: And so the granting of a lien in the con -- and the granting of a lien, which is a, we'll stipulate, is a fraudulent conveyance, it's Safe Harbored. No merger, forget the merger. Stand-alone --

MOSES SILVERMAN: I'm sorry, can you say that again?

THE COURT: We have an outstanding credit agreement, and all parties agree that there's a -- and there's a lien granted and it's a fraudulent conveyance, that can't be undone.

MOSES SILVERMAN: If there is a lien granted, why would the fraudulent conveyance (indiscernible)?

THE COURT: I'm trying to -- I'm not doing a good job of making up facts. The point that I'm trying to make

is, if you take the merger context out, does the expansive construction of 546(e) operate to always preclude --

MOSES SILVERMAN: You take the merger out of it, there's no securities contract.

THE COURT: If you take the -- that's my point. Is that -- the securities contract that you're focusing on is the merger agreement, not the loan documents.

MOSES SILVERMAN: It's the merger agreement and the deed of trust.

THE COURT: Okay.

MOSES SILVERMAN: It's both. And the fact is, what they're trying to do is they're trying to unwind one small part of a multibillion dollar merger. I mean, as had been suggested --

THE COURT: But in a normal -- in a non-merger context, just a loan agreement, loan agreement, deed of trust, it can't be that --

MOSES SILVERMAN: That's right.

THE COURT: Right, okay.

MOSES SILVERMAN: That's right. The only reason that we have this argument --

THE COURT: Is because of the merger.

MOSES SILVERMAN: -- is because this was, to use the word, interrelated with the merger, and the Courts have said, we're talking about related to, related to,

interrelated, they seem to acknowledge it. So, we need a transfer, we need it to be to a financial institution, we need it to be in connection with a securities contract.

The first two elements, I think, are easy and they're not disputed. A lien is a transfer, and the agent originally, Bank of America, then Wilmington Trust is the financial institution. I don't think we have any disagreement. Our disagreement is whether it was in connection with the securities contract.

You know, Your Honor is familiar, obviously, with the relevant cases here. Madoff says, at 422: "Section 546(e) sets a low bar for the required relationship between the securities contract and the transfer sought to be avoided." And at 421: "In the context of Section 546(e) a transfer is in connection with a securities contract if it is related to or associated with a securities contract."

And Judge Peck in Lehman said: "The words 'in connection with' are to be interpreted liberally. It's proper to construe the phrase 'in connection with' broadly to mean related to."

Now, as I mentioned, there are two reasons why the "in connection with" requirement is met in our submission: first is the merger agreement and second is the deed of trust. So, let me take them one at a time.

First, I don't know if you remember Jay

Greenfield, who used to say, who told me when I was a young lawyer, “Pick up the easy sticks first.” “Life is like pickup sticks, you pick up the easy sticks first,” so let me pick up the easy stick first.

The merger agreement is a securities contract. They acknowledge that, Page 16 of their opposition, and it obviously is because it was the exchange of securities, and that’s spelled out in Paragraphs 98 and 102 of the complaint. The liens were in connection with the merger for two reasons.

One, they were required by the secured loan agreement under the additional collateral provision, and they had to do it because of the merger. Their brief says at Page 19 and carried over to 20, “It’s therefore true that, but for the merger agreement, Forest Oil would not have pledged its assets to secure the deficiency of the legacy O&G term loans.” Let me just digress for a moment. That’s a good example of using names a little confusingly. Because it wasn’t legacy Forest Oil’s assets and it wasn’t Legacy S and --

THE COURT: It was the combined company.

MOSES SILVERMAN: It was the combined company’s assets, to support what became the combine company’s debt.

But in any event, end of digression, I don't know how you can say it’s not related if it was only given, but

for, and then to go back to some of the things we discussed earlier, Your Honor, the complaint says the granting of the liens was, “one of the integrated series of transactions.” That’s Paragraph 95, 125, 126, 129 of the complaint, and in the opposition Page 7 to 8 when they made the point about, this should all be collapsed, they called this the -- and they’re trying to collapse the liens into the merger agreement, but they say it’s interrelated, integrated, and should be collapsed into a single transaction.

I don't know how they can say it should be collapsed into a single, integrated transaction, but the liens were not given in connection with the merger, and are not associated with them.

Let me move to the deeds of trust. Your Honor, I have to pronounce my words carefully to get security and securities clear. 741(7)(a)(xi), which is the definition of “securities contract” or part of the definition, defines a securities contract, I guess part, sub i defines it simply as: “a contract for the purchase, sale or loan of a security,” and that’s what the merger agreement is. But sub-paragraph xi of the definition, says securities contract means “any security agreement or arrangement... related to any agreement or transaction referred to in this paragraph,” which means, and a security, obviously the deeds of trust are a security agreement, any security agreement given in

connection with a securities transaction is a securities contract for purposes of the Safe Harbor proposal.

For all the same reasons, which I don't need to repeat, the deeds of trust specifically recite the history of why they're being given, specifically mention the merger agreement, specifically mention the fact that as a result of the merger agreement, they -- the new company has this obligation and this is being given in fulfillment of it. That meets the definition of "related to."

So let me talk briefly about my friend's response. Again, I think they admit the key points that we believe makes our case here. The merger agreement is a securities contract, the lien and the merger agreement are interrelated, part of an integrated transaction, and the only reason the liens were given was because of the merger. That is "related to" in any meaning of the word that I can think of, and certainly the broad meaning that the Courts have told us to apply.

So, what are their arguments? First, they say this was given in support of a loan agreement. That's true, and Your Honor made that point as well. It was. But the Second Circuit in Madoff at Page 422, said, quote, "a transfer can be connected to and can be made in relation to multiple documents for purposes simultaneously," and that's what happened here. It was given both because it was

required under the security agreement, which it had to assume as part of the merger agreement. They also argue about "in connection with," I think we've covered these points. They say in Page 4 of their opposition that these transactions and liens are interrelated, but then they say they're not related. It makes no sense.

They distinguish the facts, which are the Safe Harbor cases, we acknowledge the facts are different. They say the deeds of trust are not related to the merger, flatly contradicting the point at the beginning of the brief that these should be collapsed into one transaction.

And then they conclude with the point Your Honor asked me about, which is the purpose of the statute. In Enron, the Second Circuit in Page 339 said, quote, "Of course we reach this conclusion by looking at the statute's plain language. We decline to address Enron's argument regarding legislative history." If we meet the statutory language test, the Second Circuit has told us, that's it.

But just looking for a moment at the purpose and what we're talking about here, when Your Honor was trying to make a hypothetical to show why this shouldn't apply to a loan transaction, what you did was to create a hypothetical that had nothing to do with a merger.

THE COURT: Right.

MOSES SILVERMAN: And absolutely, if it had

nothing to do with a merger, there wouldn't be a Safe Harbor. What the Second Circuit said about legislative history in Madoff is that the statute was to ensure, quote, "a very broad range of securities, related transfers," and what happened here was there was a multibillion dollar merger that had certain factual consequences, and they are trying to undo, they're trying to cherry pick and undo part of it. And I think that fits within the legislative purpose of the statute.

Your Honor, in conclusion, I would just mention the points that we really already discussed, which is, we understand, based on the facts alleged, why the Forest Oil Creditors might be unhappy with the merger. But that's what they're unhappy with. There are things that are consequences of the merger. Assuming liabilities and having to give liens was a consequence of the merger. They may have bought dry wells, too, that may be a consequence of the merger. They may have picked up all sorts of other liabilities. They say they bought an insolvent company. I don't wish lawsuits against anybody, but they're looking at the wrong people if they think they have a claim for unhappiness of the lawsuit -- unhappiness of the merger. There are other potential claims, I'm not assessing their quality, but theoretically, these -- if they're right, there are remedies, but it's not to attack the bystander, second

lien Creditors, who did nothing wrong, and as a matter of contract and law, have a right to the liens that were given to them.

So, Your Honor, we appreciate being heard so promptly. Obviously, the way you choose to deal with this motion and everything else going around is Your Honor's discretion. We believe that it will help this proceeding get resolved if Your Honor agrees with us and promptly rules that there is no fraudulent conveyance here. This proceeding, as Your Honor said at the first date hearing, you do not want to see it get bogged down in a quagmire of litigation. It's already burned through a ton of money. By our calculation, through August 15th, there have been $26 million dollars of professionals (indiscernible) through August 15, and it's got to be a lot more now. I think it's --

THE COURT: Well, hold that thought because we're going to talk about the quagmire of discovery that we seem to be in.

MOSES SILVERMAN: But maybe -- if I may, a prompt rule -- if the Court sends a message that sure, you're allowed to look for claims, but the Court will not -- will give short shrift to claims that don't have merit, it will help get this proceeding where it needs to go.

Thank you very much, Your Honor.

THE COURT: All right, thank you.

MR. BALASSA: Good morning, Your Honor.

THE COURT: Good morning.

MR. BALASSA: Gabor Balassa for the Debtors. Your Honor, I do have some materials to hand up, including a condensed table that I think may be helpful in reviewing some of the facts.

THE COURT: Okay. Does Mr. Silverman have a copy?

MR. BALASSA: May I approach, Your Honor?

THE COURT: Sure.

MR. BALASSA: (Indiscernible) the same.

THE COURT: Okay, very good. Thank you.

MR. BALASSA: Before I start, Your Honor, to orient the Court, there are some slides that appear at the beginning of this (indiscernible) set and what's behind the slides are some of the cases that Mr. Silverman referred to that appear in the parties' briefs, in case the Court has questions about those, those cases are highlighted for easy reference.

May I begin, Your Honor? May I begin?

THE COURT: Sure, just hold on one second. I'm trying to decide if I want to ask you a question that's been bothering me.

I guess, at the risk of knocking you a little off-course, it's going to seem like a random question, but the

company's complaint, and it's emphasized repeatedly in the briefing, is that we should be looking at this from the perspective of the -- Forest, the old Forest unsecured Creditors, right?

MR. BALASSA: Correct.

THE COURT: All right. So -- and those include the 19s and the 20s, right?

MR. BALASSA: Yes, Your Honor.

THE COURT: Okay. And forgive me if I get the terminology inconsistent, but in the post-combination company, you also have the 17s, I'll call them, group that I believe is represented by the Akin Gump firm.

MR. BALASSA: Legacy Sabine bondholders.

THE COURT: Legacy Sabine bondholders, right. So, aren't they unhappy as well? And why -- I guess, why isn't the complaint also from their perspective? Because before the merger, they were -- Sabine, old Sabine, legacy Sabine, had $1.62 billion in debt, and they sat behind the firsts and the seconds, and now, combined or new Sabine has $2.6 million in debt, the RBL was, I think, as of petition date was -- I'm sorry, it's more than that. As of the petition date, the RBL was 927, the second liens were up to 700 because the additional 50, and then their old bonds. So why aren't they also unhappy? Because now, all of a sudden, yes, these new assets came into the company, but the overall

outstanding debt is that much greater, and -- so I guess, it might be a wrong-headed question and if it is, feel free to tell me, but I just am wondering why it's from the -- as the company being the Plaintiff, it's not also alleging something bad -- that something bad occurred, vis-à-vis the interests of the legacy Sabine unsecured Creditors. Does that question make sense?

MR. BALASSA: It does make sense, Your Honor, and I think it's a question that probably the Akin lawyers would like an opportunity to answer. They certainly will have their position on this issue. And this is --

THE COURT: But you chose not to assert it.

MR. BALASSA: That's right. Your Honor, what we did is, in the investigation, which of course has continued, but as of the petition date, we had looked at the relative position --

THE COURT: The relative position.

MR. BALASSA: -- of the various Creditor groups immediately prior to the transaction and immediately after the transaction. And what we concluded was that the transaction -- and by transaction I don't just mean the business combination, the merger --

THE COURT: You mean the whole thing.

MR. BALASSA: I mean that --

THE COURT: The whole thing.

MR. BALASSA: -- and the other financing --

THE COURT: Right.

MR. BALASSA: -- transactions that occurred simultaneously. That those transactions impaired the Forest bondholders. That is, the Forest bondholders, pre-transaction, had access to very substantial, unencumbered assets, and it was by virtue of the September -- excuse me, the December 16th transactions that those unencumbered assets were effectively transferred away from them. That is, they were pledged to the second lien lenders so that the Forest bondholders no longer had access to the value associated --

THE COURT: Right.

MR. BALASSA: -- with those assets. That was not -- that impairment doesn't affect the legacy Sabine bondholders, the 2017s. There were not additional assets that were pledged on the Sabine side in the course of the business combination. And so, the legacy Sabine bondholders didn't suffer the same impairment. They weren't deprived of access to unencumbered assets by virtue of the December 16th transactions in the way that the Forest bondholders were.

So when we looked at the transaction, we concluded relatively quickly that there was impairment of the bondholders on the Forest side by virtue of being denied the value associated with Forest, legacy Forest, unencumbered

assets, and didn't see the same fact pattern on the Sabine side.

THE COURT: Okay. All right.

MR. BALASSA: Is that response -- like, I can address -- there are more angles, there are more pieces to it --

THE COURT: Sure.

MR. BALASSA: -- but we did look at rate -- reasonably equivalent value and our initial assessment was, clearly a lack of reasonable equivalent value with respect to the Forest unsecured Creditors and we didn't see the same impairment, apparent lack of reasonable equivalent value, when taking account of the entire set of transactions on the legacy Sabine side.

THE COURT: Okay. All right, why don't I let you get started? Thank you.

MR. BALASSA: May it please the Court, the Debtor's claim here concerns, as Your Honor knows, a set of transactions that occurred on December 16th, 2014. Before those transactions occurred, Forest Oil and Sabine O&G, which we're referring to as legacy Forest and legacy Sabine, were separate companies with separate capital structures and separate groups of Creditors. At the time of these transactions, Forest Oil, legacy Forest, was insolvent. Legacy Forest was also insolvent immediately after these

transactions.

So the Debtor's claim here is that the December 16 --

THE COURT: There was no legacy Forest immediately after the transaction, right?

MR. BALASSA: In fact, Your Honor, let me clarify that because Forest continued to exist through the transaction. The only entity that was eliminated by the transaction was Sabine. So pre-transaction, there was legacy Forest and then Forest continues on and assumes obligations --

THE COURT: Right, but this is the name -- this is kind of the name game issue. I mean, at the moment of the merger, the legacy entities don't exist. I mean, then there's a series of corporate things that happen in terms of the assumptions of the debt, right?

MR. BALASSA: I think Mr. Silverman suggested that, but that's not exactly right.

THE COURT: Okay.

MR. BALASSA: Sabine -- legacy Sabine merges in to legacy Forest.

THE COURT: Right.

MR. BALASSA: But that legacy Forest entity continues to exist. That is the surviving entity of the transaction, and so it may actually be a misnomer to call it

legacy Forest. It may be more accurate just to call it Forest all the way across. Forest enters into a business combination where another company, Sabine, merges into it. Forest assumes a lot of liabilities, but Forest then continues to exist. And so, it's that post-transaction, Forest entity, that Mr. Silverman's referred to as New Sabine, that we refer to as the combined company, but it may actually be relevant here that Forest doesn't go anywhere. Forest exists pre-transaction, Forest takes on obligations in the transaction and Forest continues to exist post-transaction. It's Sabine that is merged out of existence.

Your Honor, the Debtor's claim is that, through the December 16th transactions, hundreds of millions of dollars of value were transferred from the pre-transaction Forest entity, impairing the legacy Forest unsecured Creditors, and that transfer of value directly benefitted the legacy Sabine second lien lenders.

Because Forest Oil and its Creditors did not receive reasonable equivalent value in the December 16th transactions, the transfer value represents a constructive fraudulent transfer, and I'd like to turn Your Honor to the graphic that's the first of the slides that I handed up. I think it's important to understand where and how the shift in value occurred on December 16th. And this slide shows on the left-hand side, the pre-transaction entities, and this

is the instant before the transactions occurred. This is not a few months or a few weeks. The instant before the transaction occurred, we have on the left-hand side, and then we have the post-transaction capital structure on the right-hand side, what we've called here the combined company, which, as I pointed out a moment ago, really it's Forest Oil, continuing its existence.

And on the left-hand side under Forest Oil, the critical element for our claim is the $800 million dollars of bonds. And here it's important to note that, although Forest Oil was insolvent, pre-transaction, Forest had sufficient unencumbered assets to provide the Forest bondholders and other Forest unsecured Creditors with significant recovery pre-transaction.

If you look down, Your Honor, to the Sabine O&G, the green text, pre-transaction, the central element there is the $650 million second lien debt, and there's another important fact, and it relates to the second lien debt. It's -- that debt was under-secured by hundreds of millions of dollars, pre-transaction. So there was a substantial deficiency, pre-transaction, at Sabine's second lien level.

Now, in the middle column, we have the set of simultaneous December 16th transactions, and the first bullet there is the merger of legacy Sabine into Forest Oil, leaving Forest Oil as the surviving company. Now,

simultaneously with that merger, of Sabine into Forest, there were a number -- numerous financing transactions that included the refinancing, that included guarantees, that included an assumption of debt, that included upsizing of loans, and that included the pledging of certain assets.

And it's the pledging of assets, the fourth bullet down in the middle column, that's what's really at play here. The pledge of assets consisted of Forest Oil pledging hundreds of millions of dollars of value, that is hundreds of millions of dollars of unencumbered legacy Forest Oil assets that had been available, up to that moment, had been available to Forest Oil's unsecured Creditors, including its 2019 and 2020 bondholders. And those assets were pledged, as Your Honor has now heard, to secure the legacy Sabine pre-existing second lien deficiency.

Post-transaction, moving to the right-hand side, the essential element here, with -- first with respect to the second lien debt, the December 16 transactions directly benefitted those legacy Sabine Creditors. They obtained the hundreds -- benefitted the hundreds of millions of dollars of additional security, which substantially reduced the deficiency on that facility.

THE COURT: So, the -- the -- as I keep talking about, though, the $102.5 million dollar of the first lien debt that was of Forest is now gone, or becomes part of

combined company first lien debt, right?

MR. BALASSA: It is gone. There is a refinancing --

THE COURT: There's a refi, right. And --

MR. BALASSA: -- and that's paid out and that'll be $800 million dollar legacy Forest bonds --

THE COURT: Yep.

MR. BALASSA: -- instead of having $105 million of first lien debt sitting on top of them as they did an instant before the transaction, an instant after the transaction, they now have almost $1.5 billion of secured debt sitting on top of them.

THE COURT: Right.

MR. BALASSA: Okay. Now, so, Your Honor, post-transaction, the Forest Oil bonds are impaired. They and the other Forest -- legacy Forest unsecured Creditors have essentially lost the value that they had -- the access that they had pre-transaction to the significant legacy Forest unsecured -- unencumbered assets.

So, I think from this table, it's important that I try to address an issue that's -- really underlies the analysis of the second lien's Motion to Dismiss antecedent debt argument, at least. And it's --

THE COURT: Is it the granting of the lien or is it the assumption of the debt that is the critical component

of the fraudulent conveyance? Because it feels -- you know, the man who used to sit here used to talk about things that walked and talked and quacked like ducks, may he rest in peace, but it -- because this walks and talks and quacks like a preference, not like a fraudulent conveyance. It feels preference-y to me.

MR. BALASSA: Your Honor, I think that it would be preference-y if -- if Forest Oil had not stood on the precipice of a transaction where Forest Oil is insolvent, Forest Oil has no obligations on the second lien debt. Forest Oil proceeds with the December 16th transactions, and as a result of proceeding with those transactions, has now transferred value away from its Creditors, and has transferred value to what, at the time it stood on the precipice, were the Creditors of another entity. That is not a preference, that is a fraudulent transfer. And that's -- in fact, I think I can address that another way with this next -- with this next topic.

What I'd like to address with the Court is, who transferred the value here, right? Is it the post-combination company or is it the pre-combination company? And to answer that, as in any fraudulent transfer analysis, we look to see who held the transferred assets the moment before the transactions occurred.

Well, before the simultaneous transactions at

issue here occurred, Forest Oil held those assets. Before these simultaneous transactions at issue here occurred, those assets were available, provided value to the legacy Forest unsecured Creditors, including the $800 million dollar bondholders.

And it was only by virtue of proceeding with the December 16th, 2014 transactions that the value associated with those assets was transferred away from Forest Oil's own Creditors to the Creditors of what had been another company. Had Forest Oil not proceeded with these December 16 transactions, there would have been no transfer of value away from the Forest Oil Creditors.

With that in mind, I think we can -- and we'll get to the antecedent debt argument in just a moment, but we do, in the complaint, more than check the box with respect to the elements of a constructive fraudulent transfer claim. I think there's no dispute here, at least as pled in the complaint, Paragraphs 120 and 122, that Forest Oil immediately before engaging in these December 16th transactions, was insolvent, and also it's flat that, immediately after the transaction, the combined company, which was still Forest Oil, was also insolvent.

So that's the first element of constructive fraudulent transfers. To the second, reasonably equivalent value, we alleged throughout the complaint, and I think it

may be clearest in Paragraph 126, that in these business -- in the December 16 transactions, the legacy Forest Creditors and legacy Forest did not receive reasonably equivalent value. They gave up more than they received in the December 16th transactions. And so, the elements of constructive fraudulent transfer are satisfied.

Now, the defendant says that the antecedent debt rule applies to bar that claim. They say there was one company, and that one company is pledging its assets to secure its antecedent debt.

THE COURT: That is -- at the moment that that occurred, that is unquestionably true. If -- at the moment that it occurred, it is the combined company. You know, we can talk about Forest, Sabine, whatever it is, but you have to agree with Mr. Silverman that by virtue of the merger agreement, and then the assumption agreement and also by operation of the BCL, those were then obligations of the combined company, and that as of that moment, to the extent that there is debt, it's debt of the combined company, that as of that moment is not -- the second liens don't have the additional collateral. And then there's the going from 90 to 80 and then there's the lien-ing up, admittedly with what we now can -- what we "know," quote unquote, were the unencumbered Forest assets that are now owned by the combined company. So that's where -- so now we're at, as

Yogi Berra would say, a fork in the road, right?

So now we're at a fork in the road, and you say --

MR. BALASSA: And I'll take it.

THE COURT: And you'll take it, right. So, and you'll say, yes, that's exactly right, and it's not -- it's the antecedent debt of that other company, it's not the antecedent debt of this company, but that's -- I mean that's kind of the -- this is a point at which we have to decide, you know, which way we're going to go, right? It is at the moment, the debt of the combined company, and that's -- when I say it feels like a preference, because at that moment, then it gets more secure.

MR. BALASSA: The assets -- let me take it in two pieces, Your Honor. First, the assets that got pledged, those were certainly Forest Oil assets before the transaction, during the transaction, it's Forest was the surviving company in the business combination, but those are Forest assets throughout.

THE COURT: But you see, I think that that's -- that's a little too imprecise. Because Forest is -- because of the topsy-turvy nature of the way this was structured, a topic for another day, because you can say that it was Forest, it's the combined company. It's not the same entity pre-combination.

MR. BALASSA: It has additional obligations and it

has additional assets post-combination, that's certainly true.

THE COURT: Okay.

MR. BALASSA: And -- but it is Forest Oil and it changes its name several days later, but that doesn't change what the entity is. That's a name change, and these were Forest Oil assets before, during and after the transaction. What changes, is that Forest Oil takes on additional liabilities by virtue of the merger and also as Mr. Silverman pointed out, by virtue of executing an assumption agreement.

And in deciding to go forth with the December 16 transactions, which transferred value, Forest Oil was not securing its antecedent debt. And Your Honor, what I mean there is that this was debt that Forest Oil was assuming for the first time in these transactions. It was only through the December 16 transactions that Forest Oil became obligated on the debt to the second lien lenders. This was new debt to Forest, this was not antecedent debt for Forest.

The fact that Forest Oil assumed the debt through -- whether you look to the merger, an operation of law or you look to the assumption agreement as became effective simultaneous with these transactions, let's call it the transactions, doesn't change the fact that this was still new debt to Forest.

In the December 16 transactions, and in deciding to go forward with those transactions -- let me pause there. We may have an issue with the -- a moment in time, because we are looking with respect to constructive fraudulent transfer, at a stand alone entity and a decision that entity makes to go forward with a set of transactions. And so we can't ignore the circumstances that that insolvent company was in, and the rights that that insolvent company's unsecured Creditors had the moment before the transaction, and the rights that they had, in the event that the company proceeded with the transaction, whether it's a merger or any other transaction, that deprived them of value without providing them with something reasonably equivalent in return.

And so, Your Honor, the antecedent debt rule, of course, exists because fraudulent conveyance law is not intended, as Your Honor has alluded to, to take sides among a company's Creditors, right? There's no fraudulent transfer claim if a company's assets are used to satisfy obligations to one of its Creditors over another group of its Creditors. That may be as Your Honor said, preferencing. But here, in going forward with the December 16 transactions, legacy Forest did not use its assets to satisfy debts to one of its own pre-transaction Creditors. Instead, in electing to proceed with the December 16

transactions, Forest Oil used its assets to secure the debts of what at that time were obligations by another company to that other company's Creditors.

And Your Honor, I think Mr. Silverman may have said this once, I may have missed it if he said it more than once, but I think that the defendants recognize that this was not antecedent debt of Forest Oil, and it wasn't debt of Forest Oil at all. It wasn't present debt of Forest Oil at the moment that Forest Oil elects to close the December 16 transactions. And so we're --

THE COURT: No, I think that's right but I think that that -- the point was that we're looking at the wrong moment in time, and that the moment in time when the additional security is granted, Forest, the Forest that you're talking about, is no longer in existence, it's the combined company. It's all -- the debt is all now that of the combined company, irrespective of, you know, where it was born or where it used to be, and that therefore, it is now antecedent debt of the combined company and the additional collateral is given to secure the antecedent debt, ergo the per se rule comes into play. And I mean, this is the fundamental question of whether or not you say, "Yes, that's correct, they win," or you say, "That's the wrong moment in time to look at it, you have to look at it from the perspective of the fact, unquestionably, that the

old Sabine debt was not the old Forest debt. It just wasn't." Right?

MR. BALASSA: That's right. In fact, I had a note in the margin of my notes that says: "This is where things get complicated," right? Things get complicated because what the defendant has to be right about is that, because it's a merger, not only does Forest assume, by operation of law or by contract, the obligations of Sabine, but that Forest is deemed, for purposes of a fraudulent transfer claim, to have assumed the Sabine obligations not on December 16th, but to have become obligated on those before December 16th. I think what they say is they became obligated at the same moment that Sabine became obligated.

So, Sabine became obligated on this debt back in December 2012, January 2013, and what I hear the defense --

THE COURT: Well, they're saying that by operation of the law, they become obligated as of the time that the debt was originally incurred. I think that that was the point, right?

MR. BALASSA: So, going back two years, two years before the business combination, and that is a legal fiction, and the law -- but I don't say that disparagingly, really, because the law accepts legal fictions in some contexts, of course, and so for instance, they cite some cases that deal with worker's compensation in a New York

Appellate Court decision, they cite a case from this Court dealing with obligations post-merger of a union, a union that merged, and when those obligations are deemed to have been incurred by the post-merger company. But with all due respect to Mr. Silverman, Courts have never applied that reach-back concept on a fraudulent transfer claim.

And the defendant's reach-back argument would amount to a magic wand, to use Your Honor's term. It would mean that Creditors of an insolvent company could not bring fraudulent transfer claims based on obligations they incurred in a merger or simultaneous with a merger. Because over the defendant's reasoning, you can't look back. You don't look back.

If we use the graphic as a reference, you don't look back pre-transaction on a fraudulent transfer claim, once companies have merged, to evaluate whose debt was whose. You don't consider that debt separately on a fraudulent transfer claim. You have to consider them together. And so that, according to the defendant's reasoning, on any fraudulent transfer claim, by Creditors of an insolvent company, that they were hurt in a merger because they took on more debt or liabilities, than benefits they received from the merger, those claims would all fail. Because you would treat the liability that that company took on as being -- as having been occurred previously and you

wouldn't distinguish, in that fraudulent transfer claim, between --

THE COURT: But I think -- I don't think that's exactly it because I think that here, I think that there's a difference between a fraudulent transfer claim in the absence of the granting of additional liens. I mean, here, there's two things that happen that are causing distress. One was the incurrence of the additional debt and by operation of the documents and the law, that required the giving of additional security. So, if you -- right?

So, it's the giving -- here, we're not -- it's not just kind of the bare assumption of the liability, it's also the giving -- it's the giving of the security that's what is kind of at the heart of the complaint. From the standpoint, though, of the -- if you for a moment are a second lien lender, right, and you've lent this money and you've protected yourself with these covenants and this transaction permissibly happens all around you, I mean, they weren't the architects of it. There's no allegation that they were the architects of it, right? So this transaction happens around them, and as a result of that, their credit risk also gets altered and just the way the documents operate, they are entitled to additional collateral, otherwise they would be hurt. Right?

MR. BALASSA: Certainly, it's true, Your Honor,

that there are beneficiaries of transfers that turn out to be fraudulent transfers who are innocent. There's not a scienter requirement but if we look at a different group of Creditors though, the Forest -- legacy Forest Creditors, unsecured Creditors, and for example use the 2019 and the 2020 bondholders, from their perspective, they were going along and they have access to these unencumbered assets -- while the company is insolvent, there (indiscernible) to make substantial recovery.

And then a transaction occurs, and whether it's a merger transaction or any other transaction, if that transaction or in this case, series of transactions, impairs that and (indiscernible) of value --

THE COURT: The gentleman on the phone who's coughing and sneezing, either stop coughing and sneezing -- please, three strikes you're out. Put your phone on mute or I'm going to disconnect you. Thank you.

MR. BALASSA: So Your Honor, from the perspective of Forest Oil Creditors, unsecured Creditors, pre-transaction, while the company's insolvent, they stand to recover a lot and the question is, from their standpoint, did they receive reasonably equivalent value in Forest Oil proceeding with these transactions, and if the transactions were a purchase of some new asset, they'd (indiscernible).

THE COURT: Maybe it's like Mr. Silverman says.

Maybe it was just a bad transaction. Maybe it was just a bad transaction.

MR. BALASSA: So that brings us back to some of the case law, and because Mr. Silverman talked about Allegheny, I think it may be worth a moment looking at at least that case.

THE COURT: Sure.

MR. BALASSA: So, that's Tab 1 of what we've handed out, and I'd like to turn to the page that Mr. Silverman referred to, it's in this hand-up, the page numbered 5, bottom right-hand corner. And I'd like to turn to the same headnotes that he directed the Court to, so that's headnotes 1 and 2 on the bottom left-hand corner of that page number 5, and for the record, that's pin slate 162. And there's some -- is Your Honor there?

THE COURT: Yes.

MR. BALASSA: There's some highlighting at the bottom of the page and it said, "In particular, the trustee appears to attack as a fraudulent conveyance," and that list A through E and Mr. Silverman focused on E.

But what we've cited, and I think where this case is most on point, cited A. Centennial is the surviving company in the merger. Centennial, or the trustee for Centennial, which is a bankruptcy, wants to assert a constructive fraudulent transfer claim and the first

conveyance that they want to attack is the surviving company's absorption of liabilities of the PHCT subsidiaries, so those are the entities that merged into Centennial as of October 31, 1996.

And they say at least to the extent those liabilities exceeded the value of the assets of the PHCT subsidiaries as of the same date, so that's a constructive -- that's a recently equivalent value concept. Of course, did the surviving company take on more liabilities than the valuer receive from the assets? It's a simplified version.

And the Court then says in a limited discussion, but there's not a lot of cases on this because apparently there aren't a lot of insolvent companies that merge with companies that are in better shape, actually in worse shape.

At Page 8 of the opinion, the bottom right-hand corner, there's a section that starts with the heading "Centennial's absorption of the liabilities," so this is that first theory, "Of PHCT subsidiaries as of October 31, 1996 at least to the extent that that amount of said liabilities exceeded the value of the assets of the subsidiaries as of the same date."

So it raises this question, Your Honor, well, maybe this was just a bad deal for Centennial. Maybe Centennial and its creditors took on a bunch more liabilities than value they got and that's just too bad.

But that's not where the Court comes out and the Court doesn't come out there for good reason of course because in the insolvency context there is recourse that creditors have if there is a bad deal.

There may be bad deals that companies enter into, insolvent companies, and if those bad deals impair the unsecured creditors, then the unsecured creditors do have recourse. It's not just a too bad, so sad world when it comes to insolvent companies making decisions that impair their unsecured creditors.

THE COURT: But look at the -- but exactly where you are, it talks about recoverable from PHCT, right? So PHCT -- well, tough going to figure it out.

MR. BALASSA: Was the parent.

THE COURT: Was the parent, right? So it's recoverable from PHCT, right?

MR. BALASSA: I'll come back to it, Your Honor. They say essentially as long as PHCT received the benefit in this transaction, this is a reasonable theory for fraudulent transfer.

And the Court went on to say that PHCT didn't benefit. It was the parent and, therefore, there is no liable fraudulent transfer claim. That is where Allegany, if we take the principle that the theory's a good one, but then apply it to the facts here, the defendant here did

receive a benefit. They received a direct benefit in the transaction.

So the trustee was suing the wrong defendant in this case, in Allegany. Allegany is not saying that you should sue the equity holder or the parent of the party to the transaction. In fact, Allegany is saying that's the wrong defendant because they didn't benefit from this merger.

And our case -- in our case, as pled in the complaint and as we will be able to demonstrate if given the opportunity, the second lien lenders did benefit here from the transaction that impaired the legacy Forest bondholders who did not receive reasonably equivalent value when this set of transaction proceeded.

I won't dwell on the Heckinger case, Your Honor, but I will just -- which is behind Tab 2 -- but it's a similar principle and there the liquidation trust, again, of the successor company in a merger could sue for fraudulent transfer and could bring a claim that the successor of surviving company did not receive reasonably equivalent value in exchange for the assets that it contributed in the merger.

And there the Court went through -- and since I think Your Honor may have it open but it's actually at the page numbered 11 -- the Court there goes through a

constructive fraudulent conveyance analysis and ultimately enters summary judgment for the defendant. But the reason they entered summary judgment is they said that, in fact, the debtor, the surviving company in the merger did receive -- well, let me put it differently -- could not show, could not establish that it didn't receive reasonably equivalent value. So they couldn't check the reasonably equivalent value box under the facts of this case.

But, again, we can take a legal principle. We apply it to the facts like here and here we do please repeatedly and we would be able to show, if given the opportunity, that Forest Oil and the Forest Oil unsecured creditors did not receive reasonably equivalent value in this transaction.

So Your Honor, we respectfully submit that it's not just a matter of, hey, maybe this was a bad deal. It's a question whether Forest Oil proceeded with a series of transactions that was a bad deal insofar as it resulted in an impairment of value to its own unsecured creditors who did not receive reasonably equivalent value in return.

I'll move on, Your Honor. Mr. Silverman, the same -- I think the other arguments that the defendant makes really are addressed by the same reasoning and so I agree when Your Honor identified what the correlation is here. It's not just the core issue for one part of the antecedent

debt argument. It's for the whole argument.

They say that the combined company received reasonably equivalent value by granting the lien because by granting liens they avoided defaults and Your Honor questions whether that was bootstrapping.

We certainly would take issues with the argument because Forest Oil didn't have any obligation on which it was -- had the potential for defaulting pre-transaction. It had not obligation to the second lien lenders. It only assumed that obligation by virtue of the transactions that are the subject of this claim.

And then the defendant also, with respect to collapsing, said that if the -- it's a collapsed transaction, and they cite a case in their brief, and the proceeds are used for a legitimate purpose like antecedent debt, then there is no constructive fall from transfer and, again, response is the same. This was not used for inappropriate purpose. This was not antecedent debt.

Your Honor, I'll sum up on the antecedent debt argument by saying that as with any fraudulent transfer claim, we look at the position of the transferor and its creditors the moment before the transaction or transactions that issue occurred. And we also looked and compared that to the positions immediately after.

And looking at the position of Forest Oil the

moment before these December 16, 2014 transactions occurred, while Forest was on the precipice of proceeding or not with this transaction, the obligations to the second lien facility were not Forest obligations.

That only became Forest obligations by virtue of going forward with the transactions that effectuated the constructed fraudulent transfer, the transfer of value and impairment of the Forest bondholders.

This was new debt to Forest. This was not antecedent debt and defendant's antecedent debt argument, we respectfully submit, should, therefore be rejected.

THE COURT: Okay. Do you want to spend any time on Prop 46E? You can rest on your papers if you like.

MR. BALASSA: I will take -- I will follow advice that I received long ago and rest of the papers. Thank you, Your Honor.

THE COURT: Thank you. Yes, Mr. Wofford, your standing.

MR. WOFFORD: Your Honor, may I be heard briefly?

THE COURT: I think I'm going to let Mr. Silverman come back up while his points are fresh in his mind and then I think we might take a short break, all right? And even though I didn't permit the filing of any papers, I'll hear -- I'm willing to hear from you, all right? Okay, Mr. Silverman, why isn't your opponent completely wrong?

MR. SILVERMAN: Why is he completely wrong?

THE COURT: Why is he completely wrong?

MR. SILVERMAN: Well, he's right about a lot of things, all the things he admits. Let me very brief, Your Honor, and start with the claim that this is not an antecedent debt.

Looks like there's no case on what actually, believe it or not, Allegany is. This is one point where it's clear. It says that in a merger when you merge with a company that has a debt, you look at the date of the debt. Now, it was doing that for another purpose. It was doing that to see if there's a (indiscernible) credit and so forth.

But that is at least the only case that I know of that deals with antecedent debt. But what was missing from my friend's description was the word present because the statute talks about present or antecedent debt.

Now, these liens were not given when new Sabine had no obligation. These liens were only given -- and the deed of trust says it and it's obvious -- because they acquired the obligation.

So you could look at it one of two ways I think. You could either accept the Allegany (indiscernible), which is that when they acquired the company and acquired the debt they acquired the debt as of the original debt, so it was

antecedent debt, or when they acquired the debt it became present debt and that's just as good and was missing from my friend's --

THE COURT: But the point was that it was -- it is the acquisition of the debt that is itself the fraudulent conveyance. It's at that moment life is good for the unsecured creditors at Forest and then they go out and they bring in this huge amount of debt and then life is bad for them.

MR. SILVERMAN: Look, Your Honor, every time a company acquires an insolvent company or works with an insolvent company, which is the obligation we're dealing with here contrary to all the other representation, but that's the allegation we're dealing with here, it is going to hurt the creditors of the acquired company or the company, the surviving company. That could be because of a debt obligation. It could be because of environmental problems. It could be because of asbestos problems.

But when you acquire a company and merge into it and merge it into yourself, you are getting it all, the good stuff and the bad stuff. If my friend's argument were right, you could just avoid every bad thing that you don't like when you acquire companies and obviously -- and the creditors would have nobody to sue because the company that was their obligor is good. So that obviously can't be the

law.

The only reason they gave the liens was because they acquired the company and by acquiring the company they accepted the obligations of the company. So it was either antecedent debt or present debt, and we're talking about the liens here. They've conceded the claims. We're just talking about the liens.

It was antecedent debt that -- of a company that's now them because they merged or, at the very least, it's present. It couldn’t not be present. They didn't give the liens before they got the debt. I mean, that just didn't happen.

So the idea -- so it seems to me it's antecedent debt. If it's not antecedent debt, it's present debt.

Now focusing about a moment before the deal is kind of interesting because a moment before the deal, there was no merger. There was no acquisition and that focuses what it is they're complaining about.

They're complaining about the merger. And the Allegany case is a case, as we've discussed and as Your Honor pointed out, which was against the company sort of seller, the equivalent of ultimate parent Sabine. Now --

THE COURT: Well, that's because in that, the allegation was that that was the party in that case that benefitted, so now they're saying --

MR. SILVERMAN: But that's the company -- that's the part that got the consideration.

THE COURT: Right.

MR. SILVERMAN: But when the Court held --

THE COURT: Which is the comparison to your group is that you got the consideration. You got the liens. I think that's what the argument is, unless I'm misunderstanding it. You got the benefit. You got the additional collateral.

MR. SILVERMAN: We got what we were contractually and legally entitled to, which obligation they determined to assume as a consequence of this merger.

THE COURT: Right but this goes to the innocent bystander.

MR. SILVERMAN: But the consideration was given to the seller, not to us. Now, you know, their chart is kind of interesting because when you look at their chart -- and I'm not going to look at the details of it -- what they're doing is they're attacking the transaction and they are just taking one little item and saying let's try to set that one aside.

But their problem is that they are attacking the transaction and they may or may not have a fraudulent transfer claim because they gave worth to the securities they tell you because they say for Legacy Forest was

insolvent at the time.

You know, we obviously agree with Your Honor's perception that if there's an issue here it's a preferencing type issue but, of course, we're beyond the preference period, so they can't bring a preference.

And the cases we cite, Page 11 of our client brief, talk about the fact that there are things that preferences are made to cure, but that does not create a fraudulent conveyance case and it comes from Ultramar and the cases that are cited.

THE COURT: Can I ask you talk about -- and if you're not prepared to do so, that's fine and we can just take a break -- about Heckinger at all? Is there anything that you wanted to --

MR. SILVERMAN: Well, the point of Heckinger is that the case was against people who took money out of the deal, the directors and the bank lender. If you look at Footnote 224 on the last page, it explains what the claim was about the bank lender.

The claim wasn't against our previous -- about a previous loan. It was about the fees that were taken out as part of the transaction and I think that's Footnote 24. It's at the end of the statement.

In Allegany, my friend pointed out correctly that the Court rejected the fraudulent conveyance theory on the

point he mentioned because the seller hadn't gotten the benefit. But I don't believe it says that there was a valid fraudulent conveyance theory against someone else. That's not what the opinion -- that's not what the opinion says.

THE COURT: Okay.

MR. SILVERMAN: Does Your Honor have any further questions?

THE COURT: Very good. Thank you very, very much. It's five minutes after. Let's take a break until 12:15. To the extent that folks who are going to want to be heard with respect to the discovery matters, if there's anything that you might want to say to each other in the break, you can do that. And Mr. Wofford, I'll hear from you at 12:15.

MR. DUBLIN: Your Honor, can I answer your questions for the 2017s that you had before debtor's counsel (indiscernible)?

THE COURT: Sure. I don't want to be here all day. You can go after Mr. Wofford when we come back, all right? Thank you, Mr. Dublin.

Okay, please have a seat, everyone. Okay, I promised Mr. Wofford a chance.

MR. WOFFORD: Your Honor, thank you. For the record, Keith Wofford from the firm of Ropes & Gray on behalf of the official committee of unsecured creditors.

I rise today, Your Honor, notwithstanding the

prior -- I'll call them admonitions in the chambers conference, because we took to heart something that the Court said which was that this proceeding and this argument may not be used in a way to prejudice the unsecured creditors.

We understand that that was the Court's pronouncement. We encourage the Court to follow through upon that. But the argument here raises two issues that are of great import not only to this motion but to the investigation claims more generally and I think Your Honor is beginning to take that into account as you go through your own thinking.

The first of these issues is on claim avoidance with respect to the second liens and perhaps other clams incurred in connection with the merger. And second with respect to second Prop 46C and E, Safe Harbor.

First, on claims avoidance, Your Honor, they're both a substantive concern as well as a procedural one and the substantive issues that the committee has always been concerned about is that it's not easy to separate the issue of claim incurrence with the merger from the issue of lien avoidance.

And the complaint purports to do that. It doesn't include account with respect to the claims of the second liens, only with respect to the liens and the committee, as

we said from the outset as you've seen in our papers previously, it is not sure that that is a distinction that makes legal sense, nor do we think that it's a distinction that serves judicial economy or economy more generally.

The claim occurrence that you've been talking about at length with counsel --

THE COURT: When you say claim incurrence, you mean -- I talk about it as assumption of liabilities.

MR. WOFFORD: That's correct.

THE COURT: Right?

MR. WOFFORD: That's correct. And this whole debate about the avoidance of the lien leaves open is the question of whether the asserted antecedent debt is a legitimate non-avoidable claim in the first place.

If this account or this suit had gone forward after full investigation by the debtors or the committee or both, there would have been a determination as to whether not only is lien avoidance appropriate but also claim avoidance. And we have not --

THE COURT: But, you know, and I don't want to get too far afield because I do want to stick to my pronouncement about not prejudicing folks. So I'm going to just take the point of your statements here as reminding me that, you know, there's a bigger picture here and that a lot of people are doing a lot of work, which I totally agree

with.

But in response to what you're saying, I mean, there is no question that the money was loaned. I mean, so you know, the second lien lenders are out the money. They lent the money to the company I'll say.

MR. WOFFORD: That's right. But the issue is that the consideration of whether the claim should be avoided may well be considered, as you have raised the context (indiscernible), and the context with the lenders of Forest creditors or the Legacy Sabine unsecured creditors. And vis-à-vis those creditors, in fact, there was no money loaned with respect to the second lien debt with the exception of the $50 million that was mentioned.

And the question as Mr. Balassa put it is in the context of claim avoidance, do you follow the heed of Allegany with respect to the import of an incurrence and is that considered an incurrence that's separately avoidable?

Now, I agree, Your Honor, that there's an issue to be discussed. Where we don’t want to go is have it date back to determination on that issue with respect to claims and to the import of claims incurrence and the context of a back door implication from a decision on the lien avoidance. And given the --

THE COURT: But I'm going to say again -- I won't say it again. I won't hear from everybody today. We're

going to now -- when you and Mr. Dublin are done speaking, we're going to have conversation about discovery and where things stand. So I'm not going to -- I do what I said what I'm going to do. I'm not ruling and, you know, if you folks know what my thinking is, that's great because I'm telling you I don't. So there are no tea leaves to read at the moment other than being very focused on trying to get smarter on all these issues.

So I hear nervousness in your voice that I'm about to do something that's going to, you know, shift the playing field. I'm not, okay? I'm not. So I don't want to also react to what you're saying a way that shifts the playing field, so.

MR. WOFFORD: I understand.

THE COURT: So please, nobody take my reaction or non-reaction as an indication of what my thinking is.

MR. WOFFORD: The committee, as it's said before, would prefer that there be frankly no independent decision on this action at all because, again, all of the debate here has been about the first day rule must be respected because they're antecedent debt. If there's still a challenge of that debt, we're going to be back to the beginning. So that's really the import of what we're saying.

We're just trying to struggle with how you can do anything on this given the tenor of the debate today without

leaking over into those other still open issues.

So Your Honor, with respect to 546(e), which is the other elephant in the room, again, in terms of implications, the presence of the per se rule discussion I think is potentially clouding the discussion of 456E. And the breadth and power of applying the Safe Harbor to the merger here does not just go to the incurrence of liens here.

But given the extent of the Safe Harbor, were you to rule on 546(e) that the relatively permissive interpretation of connection with, which is to reinterpret it as related to, if you were to adopt that interpretation, I suspect, Your Honor, that we'd be hearing 546(e) evoked in connection with whatever is the potential outcome in terms of litigation of asserted claims with respect to other (indiscernible) that may be later asserted by the creditors committee or other parties in interest of these estates.

And so, you know, look, we agree with the debtor's arguments in respect to the per se. But the 546(e) argument here is something that we say -- we would remind the Court that it will have potential effect in terms of precedent far beyond what is merely at issue here which is the incurrence of the liens that, as you know, it extends preference claims, it extends potentially to constructive cross on the conveyance claims and so that would, in fact, potentially

bleed over into the incurrence issue which is being left open.

With respect to the substance of the 546(e), Your Honor, I would refer to pronouncements of Judge Posner in the 7th Circuit in talking about related to jurisdiction.

At some point, everything is related to everything else and we would suggest that at some point, Your Honor, that there has to be some distinction draw, even in the context of a text such as related to or an interpretation related to that allow you to distinguish between things that actually are connected with what Congress intended to do and what the language talks about, which is securities transactions and whether it is not in connection with such Securities actions like securing antecedent debt that the defendants themselves they have incurred years before the merger was signed.

THE COURT: Okay. All right. Thank you very much. Mr. Dublin?

MR. DUBLIN: Good afternoon, Your Honor. Phil Dublin, Akin Gump on behalf of Bank of New York as the 2017 notes trustee, otherwise known as the Legacy Sabine notes.

Your Honor, I've taken today's hearing for what I understood to be as an education process for Your Honor, so fully appreciate nothing that I have to say is going to prejudice anybody, whether it be the debtors, any of the

unsecured creditors, the first liens or second liens.

As it relates to the question that you asked of debtor's counsel as to what about the 2017 notes, okay. Well, as we stand today, the 2017 notes are situated exactly the same. We can (indiscernible) come up with the same thing, Page 1 of the debtor's presentation, though I'm sure it's also in the charts that you have.

The 2017 notes and the Legacy Forest notes are exactly the same. We all have the same obligors --

THE COURT: Right.

MR. DUBLIN: -- and so we are pari passu creditors.

THE COURT: Right.

MR. DUBLIN: So comments as to or how that impacts the 2019 notes or 2020 notes, i.e. the Legacy Forest notes, the way they preface it, it impacts us exactly the same way. So what happened --

THE COURT: But in terms of -- my question really was in terms of impairment, right, before and the after.

MR. DUBLIN: Right, so --

THE COURT: That's what I was trying to figure out.

MR. DUBLIN: Right. So if we look at it the way I under fraudulent conveyance law generally works, which is what happened to the legal entities, and not necessarily

their creditors, so when we're looking at a fraudulent conveyance is what did this entity incur and what did they get to determine reasonable equivalent value, we can start on the Forest side. We can see that we know they had $905 million in liabilities.

THE COURT: Yup.

MR. DUBLIN: And after the transaction, they had $2.6 billion. Seems like there might be an issue there that they occurred more liabilities and value received as far as that estate goes.

On the Sabine side of the house, we had a different type of structure because Forest was a single entity. On the Sabine side of the house, we had a Sabine parent --

THE COURT: Right.

MR. DUBLIN: so Legacy Sabine parent and Legacy Sabine subsidiaries. So both the Legacy Sabine parent and the Legacy Sabine subsidiaries started out with about $1.6 billion in debt and ended up with say $2.6 billion.

And the arguments that we heard today from Paul Weiss focusing on, well, if you do a merger transaction, well, then liabilities start the date they incur and the like. I don't agree with that.

I think there are avoidance issues as Mr. Wofford mentioned as it relates to the liabilities even at the new

parent company with respect to what was incurred in connection with the merger.

But if we look at the Legacy Sabine subsidiaries, they're not situated the same way. The Legacy Sabine subsidiaries did upstream guarantees in connection with the merger transaction. So what they incurred was an additional $140 million in change or so of additional first lien debt that they never had, an additional $150 million of second lien debt they never had and an additional $800 million of unsecured debt.

THE COURT: Right, and that was in connection with what I keep harping on that little bit is because the RBL facility was topped up and it paid off the old Forest credit facility.

MR. DUBLIN: Correct.

THE COURT: Right? And then those guarantees came into place.

MR. DUBLIN: They did.

THE COURT: So that's where your constituency was -- I don't know what the actual numbers are. I'm just talking in terms of, you know, as a matter of paper, right?

MR. DUBLIN: Right, the Sabine subsidiaries --

THE COURT: Right.

MR. DUBLIN: -- incurred the additional first --

THE COURT: Yes.

MR. DUBLIN: -- lien liability, the additional $50 million of the second lien liability and the additional $800 million of Forest liability that they argue did not receive any value for because I don't think there's much dispute that -- well, maybe there is a little bit -- as to solvency.

THE COURT: So the answer to my question of why the debtors haven't pursued it is --

MR. DUBLIN: My answer is I don't know.

THE COURT: You don't know. That's the answer.

MR. DUBLIN: There are plenty of pre-petition discussions that we don't need to get into today. We'll talk about those another day as to --

THE COURT: I mean, it's a different -- it's all putting aside, you know, related, connected, et cetera. It's all part of this thing that occurred, right, and as a result of this thing that occurred you just articulated the way in which your group was "impaired" without looking at the numbers and actual value and solvency and all of that. Your position changed not to the good.

MR. DUBLIN: Right, those -- our debtors incurred --

THE COURT: Right.

MR. DUBLIN: -- a lot more value, a lot more liability --

THE COURT: And a lot more liability.

MR. DUBLIN: -- through assumption of liability and incurrence of additional debt --

THE COURT: Right.

MR. DUBLIN: -- for which we believe our debtors did not receive (indiscernible) value. And we echo Mr. Wofford's comments that all of this should be done at the same time. The discovery that's ongoing that ultimately come out in this litigation is going to be the same whether it's with respect to ongoing second lien litigation --

THE COURT: And whether or not folks agree with all that is analytically separate from, I believe, different from the analytics that Mr. Silverman went through.

MR. DUBLIN: Yes.

THE COURT: It's different.

MR. DUBLIN: They are. Completely different, yes. But it doesn't mean that shouldn't all be taken up at the same time to preserver your time, Your Honor.

THE COURT: Got it. Okay. That was helpful. Thank you. Okay. All right. Thank you very much. So discovery, I have a letter from Mr. Martin. I have a letter from Mr. Friedman of the O'Melveny firm. I have a letter from Mr. Balassa from Kirkland on behalf of the independent directors. I have a letter from Ms. Schonholtz, Willkie Farr on behalf of Wells Fargo. And I have a letter from Quinn Emanuel on behalf of First Reserve which also

indicates that they are unable to attend the hearing today.

So I don't know if anyone's here, if anyone's on the phone. Is anyone on the phone from the Quinn Emanuel firm?

Okay. Well, the problem is that this wasn't officially noticed as a discovery conference and I have a great deal of difficulty in terms of fairness talking about it in any detailed or dispositive way having been told specifically by the Quinn Emanuel folks that they are not here. And they're not here.

But here's the practical issue. It's October 15th. The challenge deadline is looming. There are various deadlines looming. The thing that perhaps got me most concerned in all of the paper was the indication from Kirkland that the independent directors approached the committee and suggested that there be a joint modest extension of the challenge deadline.

So just in terms of the practicalities of it, selfishly, I'm going to be out of the country beginning on the evening of the 20th, not returning until late in the day on the 28th. And no offense, but I don't want to talk to you on the way let alone, you know, try to negotiate extensions and who's delivering what documents to whom.

So I think we ought to figure out a way -- and, again, I'm not going to do this in any way that prejudices

First Reserve. We need to figure out what we're doing and we need to be rational and to the point that many of you have made and notwithstanding Mr. Silverman's arguments to, you know, that there be a quick exit to, you know, to the complaint that's now filed, we have to figure out what we're going to do, how we're going to sensibly move this case forward.

I actually don't believe that there's a purposeful effort going on to delay because, you know, no one's going to get away with that. I mean, you know, when push comes to shove, I'll find out who produced what documents to whom and when and if there's been a failure to move forward reasonably, I'm going to extend deadlines.

So it's probably in the category of this is a massive amount of stuff. It takes a long time to do even when the best firms, which you all are, throw a lot of resources at it. So how can we sensibly move this case forward mindful of the burn rate?

I'm really struggling with striking a reasonable balance. And I'm going to say something that's going to make you so unhappy but I'm going to say it anyway. What troubles me most is the multiple parties doing the same thing, that the specter of the death by a thousand cuts.

One could observe, I'm not saying that it should happen, one could observe that this might have been a good

case for an examiner for one person to be looking at all of this. Instead I have the committee and I have the 19s and the 20s and I have the 17s and I've got the independent directors who at the moment are still being represented by Kirkland, et cetera, et cetera. You all know -- I know you all know what I mean.

So how do we do this in a reasonable fashion, expeditiously? Don't want the case to last forever, don't want death by a thousand cuts. Is -- help me out here. Do you have an answer?

MR. WOFFORD: I -- getting away from the granular discovery back and forths, a discussion on the framework of that very question, Your Honor, so that's why I was so quickly to speak.

Look, we were concerned that this was the last omnibus date Friday to extend end of the challenge period and we didn't know what your schedule would be. And we just wanted to put Your Honor on notice to some of the competing concerns that the committee is facing with respect to precisely that issue, which is we've got two timelines to balance.

One is the challenge deadline itself and the other is getting to a recovery and an outcome and the rest of the case, including the expiration of the cash collateral order in January and the path to a reorganization plan.

So look, we want to move along the investigation swiftly because of that second timeline. We're very sensitive to the resource burn and with respect to, you know, the general burn of cash potentially in the cases. But we don't want to be told when the investigation concludes that we have to abandon cause of action at a discount because, you know, the investigation either isn't where it should be or because we're just out of time.

We want a transparent investigation. We don't want, you know, a non-transparent investigation followed by a 9019 motion that we can't get our arms around and properly evaluate or that gives away value.

So look, the deadline in our view is not a monolithic deadline because we have a number of disputes to deal with in connection with that deadline. We have to deal with five different settlements by our record. The initial perfection of the bank's liens, the potential avoidability of liens perfected during the preference period, the challenges to the swaps and the application proceeds, challenges to the lien on dispute of cash, which you've heard referred to earlier and then finally, and not insignificantly, all of the disputes related to the 2014 merger and the related issues.

So, one of the things that the committee is trying to weigh in the context of this discussion -- and, by the

way, we didn't ask for an extension of the deadline. We're considering to what degree the deadline should be extended and whether we can move some issues rather than the others without extending the deadline.

You know, but what we need to do is we need to have a discussion and the protocol foreshadows this with a requirement of the debtor to give a report on where they are on causes of action and the reason for that is we'd like to know where we agree with the debtors, where we disagree with the debtors and where they think causes are viable, not viable or somewhere in between are undetermined because of the continuing investigation.

If we have that report, Your Honor, and can kick off that dialogue as called for by the protocol, then we think there is a way to talk about whether we, you know, whether there should be an extension of all of the challenge deadline, whether there should be a partial extension or whether we should try to get some issues off the table moving forward, particularly because cash collateral is coming again in January.

So I guess our thought on this was to be able to have a coherent discussion about the buckets. Number one, we need to have that preliminary discussion from the debtors and, number two, we're going to -- I agree with Your Honor, it's a bit of a tension of trying to figure out what we do

to the extent that there are items where you're not going to have completion.

We've been trying to live within the concept of complete for everything but we have a November 10th deadline fostered by our lenders that the lenders now themselves say in various guises that some or all of them will not be able to complete everything we ask for within that deadline. I'm not placing blame.

I'm not going to get into the, you know, sort of blamestorming or mudslinging game on it but the fact of the matter is, whether it is reasonable for those institutions to do something under a certain timeline or not, we do have these other two timelines we're worried about in terms of the challenges deadline, timeline and the case timeline.

And so we do believe we may be back and forth Your Honor and we'd like not to have to be back and forth, Your Honor, but.

THE COURT: Mr. Balassa, am I talk to you or am I talking to Mr. Marcus?

MR. BALASSA: To me, Your Honor.

THE COURT: Okay. So is your idea that -- are you going to hit your deadline? Are the independent directors going to hit their deadline of the 26th?

MR. BALASSA: Your Honor, given the case of the third-party discovery, we're not.

THE COURT: You're not.

MR. BALASSA: We were counting on the same third-party discovery, to see third-party discovery that the committee is counting on seeing. And so we need to see that. And what we have in mind, what we propose to the Court, is what we've set forth in the letter and what we've already attempted to do with the committee and that is to get with them and talk to them about what a reasonable extension of the challenge period is.

When do we expect these third parties to have their documents in? And then we would approach the other constituents. We'd certainly approach the first lien lenders, among others, and try to negotiate an extension of the challenge period.

And I would suggest that we start those conversations today or tomorrow and that we try to report back to the Court before Your Honor goes out of town so that we have a realistic schedule in place and there is not a barrage of papers in the last few days before --

THE COURT: Yeah, I mean, look. It's really, you know, almost every discovery dispute like this is the same. You read one letter and the world's coming to an end and you read the next letter and, you know, everybody's a boy scout. So, you know, the truth lies somewhere in between.

In this particular case, I do find it difficult to

believe that parties are purposefully being dilatory because I'm just going to find out. So I don't believe that. But I do believe that things tend to take longer than people think that they're going to take.

So I'm interested in hearing from Ms. Schonholtz and I'd like to come up with it before I let you all go. I'd like to come up with a game plan for discussions and when, you know, a timeframe for you to figure something out on your own and then in the absence of that coming back and having a supervised discussion with me and also at a time when -- I mean, nothing that we're saying now affects in any way First Reserve, so that's why I feel comfortable continuing to have the discussion. So let me hear from you.

MR. BALASSA: Your Honor, may I say one last thing before I sit down? I think it hopefully came through loud and clear in my letter from last night but we don't have a perception that people are being intentionally dilatory.

THE COURT: Yes, right.

MR. BALASSA: It's our perception folks are working very hard. That includes the committee. We're on the phone with them all the time, hours and hours every day. But also --

THE COURT: Maybe if you talk to each other less you could get more done.

MR. BALASSA: It's not just us. It's also with

the third parties.

THE COURT: Right. Stop meeting and conferring and actually just --

MR. BALASSA: -- significant resources, so it is our impression that folks on all sides are working very hard to get these materials collected. As Your Honor pointed out, these things just take time.

THE COURT: Yeah, I mean, we can disagree around the edges on search terms and custodians and things like that. But for the most part, you know, I think people are focusing on the lion's share of the documents. So let's hear from Ms. Schonholtz. Maybe she has a solution to the quandary.

MS. SCHONHOLTZ: Margot Schonholtz for Wells Fargo, the first lien agent. Thank you, Your Honor, for permitting me to be heard. And let me just give you very briefly background as to where we know we are, despite what the letters say.

Wells has moved as expeditiously as I have ever seen a major financial institution move with respect to trying to respond to the joint request. So frankly, we were stunned yesterday when we saw Mr. Martin's letter that was filed, not served but filed, on the eve of this hearing.

It was actually filed during a meet and confer when we were telling the committee that Wells' document

production would be starting this week and completed by October the 30th and that is for 12 custodians on the list of documents which was attached to our letter, Your Honor, and you see it's not a small list.

We voluntarily gave the committee, without them even asking, in early August, all of our lien and loan documents. So hopefully they're making some progress on that. And we got the voluntary request on September 21st. And doing the math, Your Honor, we will have completed our voluntary production three weeks from the time that we agreed on the custodians, the searches, et cetera.

The protocol anticipated that we would need more time. We (indiscernible) major financial institutions and we've heard no complaints from the committee or the debtor at all until that letter was filed yesterday.

So we will proceed as we have told them we will proceed and we will continue as we have on regular meet and confers to keep them apprised of our progress. We can't speak for the other lenders here. We are aware of what's happening. Barclays and Wells Fargo stepped up voluntarily to submit themselves to massive document requests in a very short period of time.

We did it, as Your Honor will recall, on the 2004 request in order for the other lenders to perhaps get targeted discovery on discrete issues like their hedges.

That has not unfortunately come to pass and the debtors and the committee have served massive document requests on several other lenders in the group and we believe, frankly, as a constructive suggestion, that since Barclays and Wells were the lead on this transaction that the document requests for the other lenders be narrowed to issues that pertain to their particular hedges, et cetera, at least on the voluntary basis.

We have also requested, as most financial institutions require a protective order for the disclosure of our documents. We have yet to receive even a draft of that from the debtors or from the committee.

During the first 48 days of this case, Your Honor, the estate professionals billed over $8 million. It is our position that the first lien lenders are picking up the tab for this. And so the suggestion that we are being dilatory and moving the case along, frankly, is offensive.

I have told Your Honor, you have known me for decades, we will not be ridiculous and stubborn if there is an appropriate, tailored request for an extension of the deadlines. What we don't want is for parties who have3 had information for months to come in and say, oh sorry, not done. We need an extension of everything.

This will be the first time, frankly, that a client that I work with said no to any request, reasonable

request for an extension and it's not going to happen. But on the other hand, we are not willing to let this go on at the burn rate, which is ridiculous, as Your Honor noted, because there's so many people doing the same thing in an unlimited way for an unlimited amount of time.

So I would suggest that we narrow the request to the other lenders, let Barclays and Wells do their work, which they have said will be done in record time, let these people look at what they've got before they decide, frankly, that they haven't gotten enough or they -- which is what I'm hearing today -- and then sit with Your Honor and figure out how we proceed on what timeline, on what specific issues.

THE COURT: All right.

MS. SCHONHOLTZ: Thank you.

THE COURT: Thank you.

MR. HERMANN: Your Honor, may I be heard briefly?

THE COURT: Sure.

MR. HERMANN: Good afternoon, Your Honor, Brian Hermann from Paul Weiss for Wilmington Trust.

We did not send in a letter. Frankly, I didn't think we were targets of the committee's letter. We've been cooperating with the committee to voluntarily produce documents because we think it's best to just get on with this as quickly as possible. And that's largely because we can't have a conversation with anybody in this case, most

importantly the debtors, until the circle of litigation or the uncertainty surrounding this litigation can be clarified. And so we really need to move this forward.

One suggestion that I might offer just thinking as I'm listening to the argument, is if I go through Mr. Wofford's five categories of things that he needs more time to investigate, some of them, to me, seem like things that can be done relatively quickly.

So if there was a prioritization, maybe there doesn't need to be an extension of the challenge period for everything or maybe if there is an extension, there is an extension to get certain things done and then maybe another extension to get other things.

So for instance, he mentioned avoidable liens that were granted during the preference period.

We know that there were some liens given during the preference period. We alluded to them in our papers in the motion to dismiss. We can easily help him figure that out. It's not that complicated. And, frankly, the value is pretty small. So that should be an issue that can get resolved pretty quickly.

With respect to challenges to the merger, I don't know everything that he has in mind, but we've heard a lot about the merger today and one of the reasons that we move to dismiss and one of the reasons I mentioned to you on the

first day of the case when we were moving to dismiss is I think that is a gating issue that we need to get out of the way.

We need to understand whether it's the liens or the incurrence of the obligations that Mr. Wofford alluded to. What is the legal effect of the merger on those claims and liens, because I think once that's decided -- and I recognize it's not going to get decided today and today it was about education, which I think was useful.

But once that gets decided, a lot of litigation in this case, I think even remains or goes away depending on how Your Honor rules and I think that will help clarify things tremendously.

So I think in sum, there are things that I think can get taken care of sooner rather than later and then other things if there's a need for more discovery or additional time to investigate, certainly we can have a discussion around extending the challenge period but not everything requires a massive extension of the challenge period and not everything requires massive discovery of, you know, 20 plus custodians and all the documents. Thank you, Your Honor.

THE COURT: Thank you. I'm most interested in hearing really from the debtor. I really am. I just -- I'm just scratching my head. Ms. Schonholtz made a good point

about Wells and Barclays and it seems that the largest focus of the committee's complaints is B of A, JPM, Citi Bank and yet, you know, looming over this whole thing is the question of what is the independent committee going to say with respect to causes of action, you know, overall relating to the merger and the transactions?

So, you know, I always look in the first instance to the debtor and here to the independent directors. So I guess I'm just asking you for, you know, some leadership here.

MR. BALASSA: Appreciate that, Your Honor. We have analyzed our documents. We have analyzed our documents some time ago. What we are attempting to do here is to complete the investigation by getting materials from third parties. That's why we've been working arm in arm on these issues with the committee.

And we think that we have made great progress with the committee in terms of getting commitments from third parties and our understanding is those documents will be produced for most of the essential third parties in the next couple of weeks.

Now, we don't have firm commitments other than to start rolling out productions and firm commitments about what they're doing. We don't have deadlines that either we have posed or could impose in this voluntary process. And I

would need a few minutes with my colleague whose spoken to more of the third parties than I have about when we'll have -- when we expect to have the bulk of materials.

THE COURT: So you wouldn't be in a position today -- putting to one side the committee's deadline, okay, we have the 26th looming, right? There's no way you're hitting that deadline, right?

MR. BALASSA: Without the materials, we can't, Your Honor.

MR. BALASSA: There's no way, right? Mr. Wofford, give yourself a rest for a few minutes. You know I'll always come back to you. So you're not even in a position today to know what to ask for, right, in terms of an extension because you don't know when you're going to get what you need to do your work. I'm not blaming you. I'm just characterizing what you're telling me.

MR. BALASSA: I think that we could confer and then propose to the committee a reasonable extension based on the information --

THE COURT: See, but for this purpose I don't care about the committee, right, because, you know, that's two weeks afterwards. I care about when you're going to be able to complete your work, when you're going to have the documents you need to complete your work. So that's kind of the first step because then you produce your thing and the

committee could say this is great. There are 50 causes of action here, you know. Our work is done. Or they could say you guys did a lousy job, you know, here are the 16 things you didn't do and we've got to keep going.

So how do I figure out -- you're alluding to a request but you're not making a request. So what do we do today? Do we do nothing? Do I let you have the room? You know, everybody's here, not the third party discovery parties, but what do I do today in terms of the deadline on the 26th?

MR. BALASSA: I propose, Your Honor, that if you gave us the room, we confer with --

THE COURT: Okay, I'm getting some nods.

MR. BALASSA: -- who are closer to where we stand with respect to the long list of third parties, get that information and then confer with the other interested parties here and then make a proposal to Your Honor, either we make a consensus or we don't but we stake out a position for the Court.

THE COURT: All right. Do you want -- I'm trying to be sensible. It's 1:00. You've been here for a long time. Do you want to, you know, as you wish, go and have lunch and talk to each other and we can come back at 2:00? Do you want to just go talk and let me know when you're ready? I have something at -- I do have something at 2:00?

Yeah, I kind of have a TRO at 2:00. But I can see you at 2:30. I just -- I want to help you in any way that I can in terms of my availability.

MR. BALASSA: If it's not an inconvenience to the Court, what I would --

THE COURT: I mean, I don't know what other commitments people have here today.

MR. BALASSA: If it suits the Court, what I would propose is that we simply take advantage of having people in the room.

THE COURT: Sure.

MR. BALASSA: That we not set aside an hour for lunch and we plow on, have conversations and then we indicate through your clerks when we're ready to talk. Hopefully that's sufficiently advanced to 2:00 that we can get back --

THE COURT: Why don't you give that a shot and we'll see what happens? Yes, Mr. Wofford.

MR. WOFFORD: Yeah. I'd like to propose one small addendum to that. It seems like a wordy one, which is we don't want to throw out the baby with the third-party discovery bath water, so to speak, in that given the pending October 26th deadline, part of the discussion should focus upon to what degree there are causes of action that can be disaggregated in terms of discussion from the third party

discovery for purposes of reporting back.

That is the debtors have a longstanding investigation. They've had a massive head start in doing this. They, as we heard in the argument earlier, reached at least some preliminary conclusions about things like the legal impact and attackability, if you will, of claim incurrence.

We would like the report and the discussion on those, you know, those items to go forward so that we know whether we're on the same page or not even fully independent of the third-party discovery. That is, in terms of moving the case forward, Your Honor, unlike many other cases, we are firmly at the belief that there are unencumbered assets here and our constituents are very loud and clear that they would like to have some focusing in the reduction of the burden as well. And to the extent that we can get some clarify on the non-third party discovery independent things, I think that would really speed along this process.

So I'd like to make sure that that -- that we don't just have a big anchor for everything from the third-party discovery discussion to the extent that we can start focusing submissions, particularly on things like constructive fraudulent conveyance.

THE COURT: To be honest, I'm not sure I understood what you just said.

MR. BALASSA: Your Honor, we're certainly talk to Mr. Wofford.

THE COURT: So why don't you folks talk and that's commentary on me, not you. I'm just not sure I followed, you know, what you said. But why don't you folks talk? I'll standby. Knock on the door when you're ready. You can use all the rooms back there for separate discussions. You're welcomed to stay here. We'll leave the phone line open for the time being. All right? Thank you.

[BREAK]

THE COURT: Okay. Thank you all for sticking in here. It's 20 minutes to 3:00. You must be quite hungry, so I appreciate your obviously working hard to accomplish something.

MR. MARCUS: Yeah, I think there's some stuff around the edges but I think generally everybody's okay with what I'm going to suggest now.

THE COURT: Okay.

MR. MARCUS: We certainly heard Your Honor loud and clear and we're going to tell you what the debtors need and how the debtors are going to drive this forward.

THE COURT: Okay.

MR. MARCUS: I would break the investigation and claims buckets into three tiers.

THE COURT: Okay.

MR. MARCUS: The first one is constructive fraudulent transfer, which is really the kind of sum and substance of the report that is sort of ongoing and ready to be issued and approved by the October 26th date.

The second bucket of garden variety lender challenges, we have initial perfection of the liens, availability of liens granted during the preference period, the swaps and then there's the lien on disputed cash. I'm going to set that one aside, Your Honor.

Everybody knows what our view is and our rights to challenge are preserved in the final cash collateral order and our view is we will do so when it becomes appropriate if it becomes appropriate for the committee to resolve this part of the greater case. Obviously that would be a better outcome for them.

And then the last bucket and the one where we're relying on the third-party discovery effort, really the intentional fraudulent transfer and insubordination type other claims related to a kind of business combination.

THE COURT: Okay. So the third category includes claims that Mr. Silverman was talking about today generally in the category of this was a bad merger.

MR. MARCUS: Correct.

THE COURT: Fiduciary duty claims, all of those are in the third category.

MR. MARCUS: Correct.

THE COURT: So those are not -- those are not in the purview of what the independent directors had been seeking to accomplish by the 26th.

MR. MARCUS: I think they were within what we had originally intended to be as part of the 26th. I think the process is --

THE COURT: Has bogged down.

MR. MARCUS: -- taken a little bit longer to get third-party discovery.

THE COURT: Okay. So it's not that that wasn't part of their mission. It's just that that's not going to be accomplished by the 26th.

MR. MARCUS: Yes, Your Honor.

THE COURT: Okay. All right. I understand.

MR. MARCUS: So with respect to the first one, which is the constructive fraudulent transfer, we will be done on time on the 26th. We're going to get that done.

THE COURT: Okay.

MR. MARCUS: We're going to give the report to the creditors committee as we set forth in the protocol and we will not need any additional time. I think that's to deliver the report and then technically the challenge period would end on November 10th. But we're not going to need -- we are not going to need any more time.

For the second bucket, the garden variety stuff, we are not going to need any more time than November 10th. Our goal is to get -- just to take a step back, we have this special committee of these two sort of independent board members because the other board members were on the Forest and Sabine side at the time of the merger and those board members we believe are independent as we're shown that transaction.

Garden variety lien challenges, we don't think the current board is conflicted in any way, so that's going to be dealt with on the full board level. And so what we need to do with respect to those is just complete our analysis. Obviously that is very far along, get a board meeting in front of the board and then look back to parties about, you know, what we're doing with respect to any claims in that second tier.

We're going to try and do that as far in advance of November 10th as we can because it's the sort of internal deadline, but we will not be asking for an additional period of time after November 10th with respect to that.

THE COURT: Okay.

MR. MARCUS: And then with respect to the intentional fraud kind of third bucket, I'm going to defer a little bit to Mr. Balassa because Mr. Balassa and Ms. Jakola have been the direct interface --

THE COURT: Sure.

MR. MARCUS: -- with the third parties on discovery and how hard they're working. But that one we would like to be done by the latest December 1st and I think -- and that's a little bit dependent on how quickly things are processed.

We are actually far along in that analysis but there is a couple things out of our control there. But we hear Your Honor kind of loud and clear on we don't need to see every single last document to get a very good idea from the stuff we have already and what we do expect other third parties to be delivering to us (indiscernible).

THE COURT: Okay. So what does that December 1st date mean for the overall -- the challenge period visa vie the committee, et cetera?

MR. MARCUS: What we talked about a little bit was -- this is Paragraph 30 -- this paragraph in the protocol that suggested that we would deliver to the committee at least 15 days before the challenge deadline, whatever it is we're going to do a report, a claim, a letter, something to describe to them how they're coming out on these issues.

We, of course, as Your Honor has asked, this is when we will be ready, December 1st. It seems to make sense to just kind of keep that in place and have a challenge deadline of December 15th to give -- to keep that same

buffer. Again, I don't think we need it but we're not against complying with the spirit of protocol as it was kind of originally drafted. And then obviously if we're done --

THE COURT: So are the lenders onboard with this?

MR. MARCUS: I can't speak for them but.

MS. SCHONHOLTZ: I heard about the discovery first date in the other room. I'm hearing about December 15th for the first time. I'm certainly willing, if it works for Your Honor and works for everybody else, to consider just moving the date for this third bucket of claims. It makes sense and I would recommend that.

I will say, however, that with respect to the constructive fraudulent transfer claims and to what I call the garden variety number two, I think it would be very helpful to keep the dates that we have and that would help me frankly be able to push the last date with my clients. That’s a long answer but I'll recommend that other dates at least for now hold.

THE COURT: Okay.

MR. MARCUS: As I said, that's -- the debtor's not asking to move those dates, so that's when we're going to get done in those first two.

THE COURT: Okay. So then let's hear from the committee then. Thank you very much.

MR. MARCUS: Thank you, Your Honor.

MR. WOFFORD: Your Honor, the committee believes that this does mark progress, but I think that the key issue that is on the table is the one that was remarked upon by Mr. Marcus.

He is correct that Paragraph 30 of the challenge period has a procedure by which the committee has -- and this is really, again, an efficiency issues -- that the committee is to receive or report whatever form the debtors have arrived upon 15 days in advance of any complaint they brought or the challenge deadline so they can confer and coordinate, figure out what's in and what's out and, to the extent things are out, the committee has to figure out what to do with it. And to the extent that things are in, if the committee disagree with them or wanted to (indiscernible) with that opportunity to discuss.

So in terms of the first bucket, which is constructive thought, having the October 26th deadline and the ultimate November 10th deadline, there's no change in the time of that.

THE COURT: Okay.

MR. WOFFORD: With respect to the second bucket of garden variety challenges where we have been coordinating with the debtors, their proposal, to be clear, says that their challenge deadline remains the 10th but because of a misinterpreting -- Mr. Marcus can correct me -- because of

the additional burden associated with getting ready for October 26th with respect to the constructive fraud issues, they may need some or all of the time between then and November 10th to finish on the garden variety issues.

And so what happens is there is a compression of potential loss of that ability to coordinate on the garden variety challenges. So we just didn't have time to get to this with the secured lenders or to resolve with the debtors.

The committee believes that there should be some date or day extension on the garden variety in the unexpected even that we do disagree that we have the opportunity to make sure that the cause of action to preserve that the debtors would not choose to bring if they, you know, bring those causes of action between the 26th and the 10th.

THE COURT: So, Mr. Marcus, what was the date around when you would go live with the category two claims?

MR. MARCUS: We didn't put a date on it only because I didn't have a specific date yet to get in front of the full board, as I suggested.

THE COURT: Right.

MR. MARCUS: So the conversation that I've had with Ms. Schonholtz and Mr. Hermann before is we would really endeavor to do that as soon as possible and if we can

do it before the 26th -- it's not part of what's going on on the 26th. That's for independent committee and these are claims that are -- that don't fall within that report. So it's a little different.

THE COURT: So as you stand here today, you're going to try to hit the 26th deadline with respect to category two claims.

MR. MARCUS: I'm going to try and beat the 26th deadline with respect to the category of claims. I just -- I'm not 100% up to speed on where we are --

THE COURT: So let's not worry about it today. Let's assume that you're going to do what you set out to do, in which case the committee -- the November 10th date can stand with respect to the category two claims.

MR. MARCUS: That works for me.

THE COURT: All right?

MR. MARCUS: Yep.

THE COURT: Okay? And then we'll cross that bridge if we come to it if for some reason they don't hit that mark and I will -- and you'll know it. I'll be back on the 28th. You'll know it, you know, we're either hit it or you won't and we can have a conversation on the 29th or the 30th in the absence of an agreement to, you know, if there's not hitting the date, no agreement on pushing the 10th deadline visa vie the category two claims and you need to

talk to me. So we have a safe zone there on the category two claims.

On the category three claims, I mean, I think it's, you know, it's your lucky day because even if, you know, even if everything that was said with respect to how terrible everybody's behaving is true, you know, you were going to pick up -- you pick up three weeks.

MR. WOFFORD: Right. And so effectively, if I understand the proposal, Your Honor, the debtor's deadline would be to report on reports of Paragraph 30 December 1st and then the revised challenge period expiration will be -- had been 15 days later but I think what the proposal is 14 days later on December 15th or --

THE COURT: Right. Yes.

MR. WOFFORD: I just wanted to check between the 15th or the 16th or --

THE COURT: Yeah, 14 days later on the 15th, right, right. And that, you know, that has the added benefit of you don't have to work over the holidays.

MR. WOFFORD: We have a couple of small housekeeping matters just to foster the things that are already going on, Your Honor.

Number one is we are still discussing trying to adjust or I think the lender would say truncate the scope of discovery for the remaining third-party lenders. Part of

that discussion is a full understanding of what we're going to be getting from Wells and Barclays because the production hasn't started. So pending that discussion, we're going to continue to meet and confer on adjusting the scope of that discovery.

THE COURT: Okay.

MR. WOFFORD: With respect to the outstanding third-party discovery targets, JP Morgan we have heard as a matter of institutional procedure only likes to respond if they receive a subpoena because I guess this informal process isn't, as an institutional matter, formal enough for them to respond and start the discovery apparatus. So I think we and the debtors consensually are of the view that we'd like the Court to authorize authority to issue a subpoena.

THE COURT: Go right ahead.

MR. WOFFORD: That way we can get them to get the ball rolling. And I think it's anticipated the committee would issue that subpoena. Okay.

Similarly with respect to the present and former directors, there are some insurance coverage aspects with respect to them being issued a subpoena. That is it is again fostering of the process in terms of their ability to respond if we were to be able to formalize our process with respect to those records who are current discovery targets

by means of the subpoenas. We'd also like immediate authority to do that, Your Honor.

THE COURT: Does anybody have anything to say about that? All right. Let's do that.

MR. WOFFORD: Your Honor, I think that's all we have on this.

THE COURT: Okay. Thank you. Ms. Schonholtz, I appreciate you're willing to work with everybody and recommend this to your client.

MS. SCHONHOLTZ: Thank you, Your Honor. Just for the record, JP Morgan is not part of our bank group, so that's a whole separate issue.

THE COURT: Okay.

MS. SCHONHOLTZ: And then with respect to the outstanding voluminous request to Natixis, Citi and B of A which are part of the bank group, we've asked and Mr. Wofford has referred to it, the voluntary discovery from them be limited to the only thing that's specific to them, frankly, which are the hedges and with the November 10th date still in place we would suggest that that would be a way to streamline and expedite the discovery of those three banks.

THE COURT: Okay.

MS. SCHONHOLTZ: Thank you.

THE COURT: All right.

MR. BALASSA: Your Honor, follow-up on that last point.

THE COURT: Yeah.

MR. BALASSA: We think not only that it's feasible but that it's necessary to try to limit some of the third-party discovery that's out there. There's some discovery that we went along with in the spirit of cooperation but with the schedule we have we are going to be seeking to narrow some of the discovery. We've talked to the committee about that. So we do take it very seriously.

THE COURT: And will that potentially resolve some of the issues that were raised with respect to Reserve? I just can't tell.

MR. BALASSA: I don't know that it would with respect to First Reserve? It may. For instance, the number of custodians, we may have a difference of opinion on how many custodians we need to collect documents from. So we'll be reviewing all of our third-party discovery requests, especially with respect to the other lenders.

THE COURT: Okay. I prefer not to have to get in the weeds of numbers of hits and search terms and custodians. I much prefer that you work that out. If you can't, I will. But you're better at that than I am.

MR. BALASSA: We hear you loud and clear, Your Honor. And then I also wanted to alert the Court that we --

the debtor expects to file a motion in relatively short order seeking authority to advance legal fees for current and former directors. But I won't present the substance of that here. I just wanted the alert the Court.

We've been in coordination with the other groups and I don't think we're going to be able to reach complete agreement, which is going to require the Court to --

THE COURT: Okay. All right. All right. So do we need -- can I just so order the record or do we need to enter an amended something or another visa vie the protocol and the dates? I'll give you -- whatever level of comfort and clarity you want I'll do.

MR. MARCUS: I think you can so order the record. We're certainly willing to -- we are going to stand by the dates that we just announced. I don't think you --

THE COURT: Okay.

MR. MARCUS: I don't think we're asking for a modification of the protocol at least as it relates to bucket two. That's, as we said before, that's probably in our dates.

THE COURT: Right. Just with respect to bucket three and the challenge period, right?

MR. WOFFORD: Yeah, Your Honor, the committee's preference is also to so order the record. I think the diversion of resources that would be --

THE COURT: That's fine with me.

MR. WOFFORD: -- such an order is not (indiscernible).

THE COURT: That's fine. Record is so ordered with respect to the dates and the undertakings that all the parties put on the record.

MS. SCHONHOLTZ: I would like the opportunity, though, however, Your Honor, to talk to my clients about changing a date in the cash collateral order.

THE COURT: Understood.

MS. SCHONHOLTZ: Thank you.

MR. WOFFORD: Similarly, Your Honor, with respect to the adjustment of the scope of the third-party discovery, we'll want to discuss, you know, the nexus of that in the bridge loan as part of a continuing --

THE COURT: Well, that's an ongoing, evolving discussion. Okay. I think I'm going to let you leave. You've been here long enough. Thank you very much and as of now the next time I'm going to see you is November 10th still, all right? But if you need to come in at the end of October, we'll see you then. Thank you all very, very much.

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I N D E X

RULINGS

L.P., D/B/A Genesis Land & Mineral Resources as Land Due Diligence Contractor

# C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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